

## **Exhibit 2**

CONFIDENTIAL  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: )  
 )  
SECURITIES INVESTOR )  
PROTECTION CORPORATION, )  
 )  
Plaintiff-Applicant, )  
 )  
vs. ) 08-01789 (SMB)  
 )  
BERNARD L. MADOFF )  
INVESTMENT SECURITIES, LLC, )  
 )  
Defendant. )  
 )  
 )  
In re: )  
 )  
BERNARD L. MADOFF, )  
 )  
Debtor. )  
 )

Videotaped Deposition of BERNARD L.  
MADOFF, VOLUME I, taken on behalf of the Customers,  
before K. Denise Neal, Registered Professional  
Reporter and Notary Public, at the Federal  
Correctional Institution, 3000 Old Highway 75,  
Butner, North Carolina, on the 26th day of April,  
2017, commencing at 9:07 a.m.

\* \* \* \* \*

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5 \* \* \* \* \*

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1 THE VIDEOGRAPHER: My name is Ken Morrison  
2 representing Veritext Legal Solutions. The date  
3 today is April 26th, 2017 and the time is 9:07 a.m.  
4 This is the deposition being held at Butner Federal  
5 Correctional Facility located at 3000 Old 75  
6 Highway, Butner, North Carolina 27509 and is taken  
7 by counsel for the Plaintiffs in the case of  
8 Securities Investor Protection Corporation,  
9 Plaintiff-Applicant, versus Bernard L. Madoff  
10 Investment Securities, LLC, Defendant.

11 This case is being held in the United  
12 States Bankruptcy Court, Southern District of New  
13 York, Case Number Adversary Proceeding 08-01789  
14 (SMB). The name of the witness is Bernard L.  
15 Madoff. At this time would the attorneys present in  
16 the room identify themselves and the parties you  
17 represent and then our court reporter, Denise Neal,  
18 representing Veritext Legal Solutions, will swear in  
19 the witness and we can proceed.

20 MS. CHAITMAN: Helen Davis Chaitman on  
21 behalf of a great number of claw-back Defendants.  
22 And, in fact, I'm taking the deposition. It's not  
23 the Trustee who's taking it.

24 MR. SHEEHAN: Right.

25 MR. GOLDMAN: Peter A. Goldman. I

1 represent Bernard Madoff.

2 MR. SHEEHAN: David J. Sheehan with Baker  
3 Hostetler, counsel to the Trustee.

4 MS. FEIN: Amanda Fein, Baker Hostetler,  
5 for the Trustee.

6 (The witness was duly sworn by the court  
7 reporter.)

8 MR. GOLDMAN: Keep your voice up.

9 BERNARD L. MADOFF,  
10 having been first duly sworn, was examined and  
11 testified as follows:

12 EXAMINATION

13 BY MS. CHAITMAN:

14 Q. Good morning, Mr. Madoff.

15 A. Good morning.

16 Q. Irving Picard has argued to Judge Bernstein  
17 that you're not a credible witness and I want to ask  
18 you a few questions about that. At the time you  
19 confessed on December 11th, 2008 had you been  
20 indicted?

21 A. No.

22 Q. At the time you confessed was there a  
23 criminal investigation against you?

24 A. No.

25 Q. At the time you confessed was there an SEC

1 investigation against you?

2 A. No.

3 Q. At the time you confessed was there any  
4 limitation on your ability to transfer funds?

5 A. No.

6 Q. At the time you confessed was there any  
7 limitation on your ability to travel abroad?

8 A. No.

9 Q. So is it fair to say that you had the  
10 option of taking a couple of hundred million dollars  
11 and moving with your wife to Switzerland and living  
12 out your life in Switzerland the way Mark Rich did?

13 A. I'm --

14 MR. SHEEHAN: Objection to form. Let's  
15 get this geared up because I don't want to  
16 interrupt. I apologize. So I'm just going to say  
17 objection. When I say that, it means as to form.  
18 That's it.

19 MS. CHAITMAN: Okay.

20 MR. SHEEHAN: But just to preserve.

21 MS. CHAITMAN: Sure, sure.

22 MR. SHEEHAN: Okay. All right. I'll shut  
23 up.

24 MS. CHAITMAN: I'm going to rephrase the  
25 question because I was rudely interrupted.



1 (Laughter on the record.)

2 MR. SHEEHAN: I apologize for that. I  
3 apologize. Go right ahead. Go ahead.

4 MS. CHAITMAN: I'm kidding.

5 Q. (By Ms. Chaitman) Okay. At the time you  
6 confessed you knew who Mark Rich was; didn't you?

7 A. Yes.

8 Q. And did you understand that Mark Rich had  
9 escaped prosecution by moving to Switzerland?

10 A. Yes.

11 Q. And did you recognize that you could have  
12 done the same thing, just moved to Switzerland with  
13 Ruth with a couple of hundred million dollars and  
14 lived out your life?

15 A. Yes.

16 Q. Now, at the time you confessed the global  
17 economy had collapsed. Do you recall that?

18 A. Yes.

19 Q. Bear Stearns had collapsed in March 2008;  
20 isn't that true?

21 A. Correct.

22 Q. And Lehman filed in bankruptcy in  
23 October 2008?

24 A. Correct.

25 Q. And the stock market lost half its value

1 when Lehman filed in bankruptcy; isn't that true?

2 A. Just about, yes.

3 Q. And you had a lot of wealthy people who  
4 owed you about \$10 billion; isn't that true?

5 A. Correct.

6 Q. So instead of confessing to a crime which  
7 would inevitably result in your spending the rest of  
8 your life in prison, why didn't you move to  
9 Switzerland or try to work out a negotiated  
10 liquidation of your business?

11 A. Well, first of all, I knew that I was  
12 guilty. I felt responsible. Secondly, I had made a  
13 decision that the best thing that I could do for the  
14 -- you know, to make restitution to my clients was  
15 to try and convince certain people that were  
16 responsible for creating my problem to threaten them  
17 with turning them in with their complicit behavior  
18 if they did not return the money that they owed me.

19 Q. Okay. And I just want to caution you.  
20 We're going to speak a little bit about the four  
21 families, but I don't want you to mention the names  
22 of any of the people.

23 A. Okay.

24 Q. Now, when you met with the U.S. Attorney's  
25 Office in December 2008, did you tell them the

1 complete truth about what happened?

2 A. Yes.

3 Q. Since that time have you ever been  
4 dishonest when you testified about what happened?

5 A. No.

6 Q. Now, as I just mentioned, you've testified  
7 previously about the four families who had been your  
8 clients from the 1960s on. And, again, I don't want  
9 you to mention the names of any of those four  
10 families, but I just want to ask you a question.

11 Was there a period prior to 1990 when Annette  
12 Bongiorno backdated trades from members of the four  
13 families?

14 A. Yes.

15 Q. Was that done without the knowledge of the  
16 members of the four families?

17 A. No. They were aware of it. They had  
18 instructed her to do it.

19 Q. They instructed her to backdate trades?

20 A. Yes.

21 MS. CHAITMAN: Okay.

22 MR. SHEEHAN: Excuse me. What time period  
23 was that?

24 MS. CHAITMAN: Before the 1990s.

25 MR. SHEEHAN: Okay.

1 Q. (By Ms. Chaitman) Now, to your knowledge  
2 has the Trustee settled with each of these four  
3 families?

4 A. I believe so.

5 Q. Okay. You testified the last time you were  
6 deposed by me that the fraud did not begin until you  
7 began doing the split strike conversion strategy in  
8 1992?

9 A. Correct.

10 Q. Now, was it, as Judge Bernstein used the  
11 expression, a light switch? When you started doing  
12 a split strike, did you stop buying any securities  
13 for the split strike customers?

14 A. No. I had started -- I had started buying  
15 -- doing the strategy for probably through 1993; but  
16 as more money came in, that's when my problem began  
17 because I couldn't put it all to work in the  
18 strategy. And I had committed that I would keep all  
19 the money working.

20 Q. Okay. I just want to say one thing. I  
21 have seen statements as early as July 1991 which  
22 seem to be in split strike. Are you saying that it  
23 wasn't -- I'd like you to give me your best  
24 recollection of when you stopped buying securities  
25 for the split strike customers.

1 A. Sometime post-'92. As I started, you know,  
2 I was still buying it in '92 and also through most  
3 of '93. After that, that's when I stopped buying  
4 securities for split strike.

5 Q. Okay. Now, you continued to have some  
6 customers who were in convertible arbitrage?

7 A. Correct.

8 Q. Did you continue so long as people were in  
9 convertible arbitrage, did you actually buy those  
10 securities?

11 A. Yes.

12 Q. Okay. So it was only in the split strike  
13 that you stopped buying the securities?

14 A. Correct.

15 Q. Okay. Do you derive any kind of benefit  
16 from your testimony as to when the fraud started?

17 A. No.

18 Q. Does it benefit anyone in your family?

19 A. No.

20 Q. If the Trustee claims you're lying as to  
21 when the fraud started, is there any conceivable  
22 benefit that you enjoy by virtue of that testimony?

23 A. No.

24 Q. Does this testimony benefit any of your  
25 family members?

1 A. No.

2 Q. Now, you testified that at some point in  
3 1992 you leased the 17th floor of the Lipstick  
4 Building?

5 A. Yes.

6 Q. And you bought a separate computer system  
7 for the people you moved to the 17th floor; is that  
8 right?

9 A. Correct.

10 Q. And that was called the IBM AS/400?

11 A. Yes.

12 Q. Now, was the IBM AS/400 on the 17th floor  
13 linked to outside sources, like other investment  
14 firms or DTC?

15 A. No.

16 Q. Now, the computers that were used on the  
17 18th and the 19th floors by the traders --

18 A. Right.

19 Q. -- were those Bloomberg terminals?

20 A. Well, we have Bloomberg terminals all over  
21 the firm, yes.

22 Q. Okay. Were the Bloomberg terminals linked  
23 to outside sources?

24 A. Yes.

25 Q. What outside sources were they linked to?

1           A. I can't probably tell you all of them, but  
2           they -- Bloomberg generally is linked to --  
3           basically, Bloomberg terminal gets information from  
4           other information providers. They're also -- I'm  
5           not sure, but they're also linked to probably the  
6           depositories as well. They're not linked to other  
7           brokerage firms.

8           Q. Okay. Now, when you testified that Annette  
9           Bongiorno prior to 1990 had backdated trades for the  
10          four families, were those carried out on the AS/400?

11          A. Yes.

12          Q. Okay. But before -- before you bought the  
13          AS/400 in 1992, what kind of computer was she using  
14          that she would backdate trades?

15          A. We had other small like, you know,  
16          computers, what you would call them, just like, you  
17          know, what you would use at home, you know, word  
18          processors and, you know, NASDAQ terminals and  
19          things of that sort.

20          Q. They were not linked to outside sources?

21          A. No. They were not linked, right.

22          Q. Now, was it -- you testified last time, and  
23          correct me if my recollection is incorrect, but I  
24          think what you testified last time is that it was  
25          not illegal for you to sell short?

1 A. Correct.

2 Q. And that was because -- can you explain?

3 A. It's an obligation if you're -- if  
4 you're -- first of all, any brokerage firm can sell  
5 short, you know, just as any client can sell short.  
6 That's a typical way of doing business, you know.  
7 So you as a client could instruct your broker to --  
8 to execute a short sale.

9 Brokerage firms more routinely go short  
10 stock to complete their customer orders at times if  
11 they don't have them in their inventory. If you're  
12 a market making firm like I was, you're obligated to  
13 honor your market, which requires you to go short,  
14 you know, at times.

15 So going short is a regular, every day  
16 business. A firm like ours, you know, regular  
17 trading inventory typically would have hundreds of  
18 millions of dollars, probably \$500 million short all  
19 the time.

20 Q. Okay. But a naked short is where you're  
21 selling short but you don't own the security; right?

22 A. The definition of a short sale is naked.  
23 It means that you're selling something that you  
24 don't own at the current time.

25 Q. Okay. And as a market maker did you have



1 an unlimited right to sell naked shorts?

2 A. Correct.

3 Q. So was it illegal for you to send a  
4 statement say beginning in '94 or whenever you  
5 stopped buying the securities shown on the split  
6 strike, was it illegal for you to send a statement  
7 to a split strike customer that indicated that the  
8 customer owned certain Fortune 100 company stocks  
9 when you hadn't purchased them?

10 A. No. It was not illegal.

11 Q. Okay. So if it was not illegal for you to  
12 sell unlimited naked shorts, what was illegal about  
13 the split strike activity?

14 A. Well, what was illegal and what we did was  
15 not reflect our short positions to the clients on  
16 our audited financials.

17 Q. Because you had a debt to each client to  
18 whom you sold naked shorts --

19 A. Correct.

20 Q. -- in the amount -- the present value of  
21 those securities; is that correct?

22 A. Correct.

23 Q. And that was a fraud on anyone to whom you  
24 gave your financial statements; is that right?

25 A. Well, depends upon how you define fraud.

1 It was a bookkeeping violation. I don't think  
2 anybody initially would consider it a fraud. You  
3 know, that's -- well, I just don't know. I would  
4 say that it clearly was an SEC violation.

5 Q. And is it fair to say that the SEC reviewed  
6 the financial information that you submitted in your  
7 focus reports on a monthly basis?

8 A. Regularly, yes.

9 Q. And if you showed a massive debt to your  
10 customers, your investment advisory customers, what  
11 would they have done?

12 A. It would have been a violation. You  
13 probably would have been suspended.

14 Q. You would have been suspended as a broker?

15 A. Correct.

16 Q. Okay. So in your view was the crime simply  
17 that you didn't properly disclose the debt to your  
18 customers on your financial statements?

19 A. Correct.

20 Q. Now, you've testified this morning that you  
21 think either at the end of '93 or early '94 you  
22 stopped buying securities for your customers, and I  
23 just want to get a better understanding of why that  
24 occurred at that time. You had -- I think you said  
25 you made a commitment to your clients to put them in

1 this strategy?

2 A. Correct.

3 Q. And what happened at the end of '93 or  
4 early '94 that you could no longer do that?

5 A. The markets had gone into a -- into a slump  
6 because of a number of things, you know, starting  
7 with the Mideast Crisis at that time. So there was  
8 a lack of liquidity. This particular strategy that  
9 we used, the split strike strategy, requires certain  
10 market conditions to be able to execute it properly.  
11 And we didn't have those conditions.

12 So because I had committed when I took in  
13 the money from the clients, primarily they were  
14 hedge funds, I had made a commitment to keep the  
15 money working constantly. Because I couldn't do  
16 that, I started to short the securities, which was  
17 as I said, not a violation at the time I was  
18 shorting the stock. It only became a violation when  
19 I filed my financial reports.

20 I thought that would just be a temporary  
21 situation for the market to, you know, recover and  
22 improve and then I would have started doing the  
23 strategy. In the interim the money that the  
24 customers came in, I basically kept it located in  
25 Treasury bills.

1 Q. Okay. So you took the money --

2 A. Which is part of the strategy as well.

3 Q. Right. So you basically took the money  
4 that went into the 703 account?

5 A. Correct.

6 Q. Which was the investment advisory  
7 customers' money?

8 A. Correct.

9 Q. And you purchased Treasury bills with that?

10 A. Correct.

11 Q. And in the early '90s the Treasury bills  
12 were bearing an interest rate of about six percent;  
13 isn't that true?

14 A. No. They probably were -- you know, they  
15 were short-term T bills, so they were probably, you  
16 know, closer to three to four percent.

17 Q. Okay. And that three to four percent was  
18 money that was earned by the customers --

19 A. Correct.

20 Q. -- whose money you were using?

21 A. Correct.

22 Q. And, in fact, the statements reflected the  
23 ownership of those Treasury securities?

24 A. Correct. And they -- well, they also, you  
25 know, reflected the ownership of the securities that

1 I wasn't buying.

2 Q. Right. Now, in late 1993 or early 1994 was  
3 your business, you were operating at that point as a  
4 sole proprietorship; is that right?

5 A. Yes.

6 Q. Was your business insolvent?

7 A. No.

8 Q. At what point in time did you become  
9 insolvent? And when I say you, I mean your sole  
10 proprietorship or the limited liability company.

11 A. I would say probably in the early 2000s,  
12 maybe somewhere between let's say '98 and 2002.

13 Q. Okay. And what --

14 MR. SHEEHAN: Can I just -- before you get  
15 an answer, two things. One is I don't know what  
16 insolvency means.

17 MS. CHAITMAN: Oh, okay.

18 MR. SHEEHAN: I'm going to ask to define  
19 that.

20 MS. CHAITMAN: Okay.

21 MR. SHEEHAN: And I'm not going to  
22 interrupt you again because I'm just going to have a  
23 continuing objection to leading questions, which is  
24 you're testifying more than he is, but I don't care  
25 about that. Just objecting. All right.

1 Q. (By Ms. Chaitman) Okay, okay. When you  
2 say that your business became insolvent at some  
3 point between '98 and what did you say? 2000 --

4 A. 2002.

5 Q. Okay. What are the events that you're  
6 thinking about that --

7 A. Well, because I was also returning -- there  
8 were client -- part of the strategy was to return  
9 profits that were earned to clients. So in order to  
10 do that, I was returning money from the 703 account  
11 to clients and, therefore, I wasn't able to buy  
12 either the securities or the treasuries. So there  
13 was a deficit.

14 So because that wasn't reflecting the  
15 liabilities and I didn't have assets to back them up  
16 at some point, I would say that would be -- the firm  
17 would be insolvent.

18 Q. Okay. So would it be fair to say that the  
19 insolvency arose from the differential between what  
20 the investment advisory customers' money was earning  
21 in Treasury bills versus the return you were paying  
22 them?

23 A. Correct.

24 Q. Did your formation of the limited liability  
25 company in -- it became effective January 2001, did

1 that relate in any way to your feeling that your  
2 firm had become insolvent?

3 A. I realize that that -- yeah, that there  
4 were problems brewing, yes, I would say.

5 Q. Well, what motivated you to form a limited  
6 liability company since you had been operating as a  
7 sole proprietorship since 1960?

8 A. Well, I was always -- I had always been  
9 advised to incorporate since I started my firm. I  
10 never felt the need to do that because I was not  
11 worried about, you know, ever being in a situation  
12 that, you know, I would have any exposure. The firm  
13 was always successful and, you know, it just never  
14 really entered my mind.

15 So I just didn't do it, but then because  
16 of what was going on with the stock market, the  
17 market had -- had crashed in 2000 because of the --  
18 there was the bubble of the technology stocks, so  
19 everybody became very nervous about the market in  
20 general.

21 So there was a rush to incorporate or go  
22 into an LLC type of mode. And the regulators had  
23 also sort of started recommending to the industry  
24 that everybody should basically do that.

25 Q. Now, Mr. Madoff, according to Mr. Dubinsky

1 the three areas of your firm functioned as totally  
2 separate legal entities, that is, market making,  
3 proprietary trading and investment advisory. Is  
4 that correct that each of these groups functioned as  
5 a separate legal entity?

6 A. No.

7 Q. Were the expenses for -- the operating  
8 expenses for each group paid solely out of the  
9 revenues generated by that group?

10 A. They were -- all the expenses were paid  
11 through a -- through the firm, but the money came  
12 out of an expense account that was held at Bank of  
13 New York.

14 Q. So there was one Bank of New York account  
15 which covered all of the say overhead expenses?

16 A. All the operations of the firm. There was  
17 a JP Morgan account. We referred to it as a 703  
18 account. And that was exclusively used for client  
19 monies in and client monies out --

20 Q. Okay. And --

21 A. -- for the investment advisory side.

22 Q. Okay. So all of the rent, personnel  
23 expenses, general overhead was paid out of the Bank  
24 of New York account?

25 A. Everything. Salaries, everything.



1 Q. For all of the employees at first the sole  
2 proprietorship?

3 A. Right, right.

4 Q. And then all of the employees at the LLC?

5 A. Yes. It never changed, right.

6 Q. Okay. And is it fair to say that at times  
7 money went from the 703 account to the Bank of New  
8 York account?

9 A. Yes. There were some instances that --  
10 that I used that, but the issue is because all of  
11 these clients had margin accounts because they were  
12 short securities, whether it be convertible  
13 securities or whether it be the split strike trades,  
14 their -- the assets of the client is fungible with  
15 the firm because the long positions, whether it be  
16 Treasury bonds or whatever, is the collateral for  
17 the exposure on the short side of the firm.

18 So there were sometimes where relatively  
19 small amounts of money, I think, in the late '90s  
20 went from the 703 account into the Bank of New York  
21 account to cover -- what was not, I don't think,  
22 understood in the Dubinsky report among a lot of  
23 other things was that customers have short  
24 positions. They're mark to market from the clearing  
25 corporation every day and short position being the

1 difference in the market. As the stock market goes  
2 up, the short position goes up. The customer gets a  
3 call which is called a margin call.

4 So typically the money would come from the  
5 customer account to meet those margin calls. So we  
6 had -- we had margin calls that we had to make to  
7 the clearing corporation, which all that which was  
8 done through the Bank of New York account.

9 So by taking the money from the client  
10 account, putting it into the Bank of New York  
11 account, that allowed us to meet the margin calls of  
12 the clearing corporation. That is typical of the  
13 industry.

14 Q. Okay. Now, I want to ask you something  
15 else since you've mentioned the margin. If you --  
16 if someone had a margin loan and you bought stock  
17 for them --

18 A. Right.

19 Q. -- would that stock be segregated in a  
20 clearing or custody account for that customer?

21 A. No.

22 Q. Why is that?

23 A. Because margin, the whole concept of a  
24 margin account is the firm is allowed to use those  
25 securities to borrow money to cover, you know, what

1 the customer is requesting to be able to purchase  
2 securities. The brokerage firm also has to deliver  
3 securities if the firm that he sold it to for the  
4 customer who needs delivery.

5 So he has to go out and borrow securities.  
6 And to borrow the securities to make the delivery,  
7 he has to -- he has to borrow them from another  
8 brokerage firm. He has to pay them for those  
9 securities. So the only -- the only securities that  
10 are segregated for a customer are what's called  
11 fully paid for securities where there is no  
12 liability or debt involved in the firm.

13 Q. Okay. Now, you've explained that the fraud  
14 was in the split strike, but if you had an  
15 investment advisory customer who instructed you to  
16 buy a specific position for them and you gave them a  
17 margin loan to do that, did you actually execute  
18 those sales?

19 A. We always execute the sales. Whatever was  
20 reflected on the customer statement, we executed.  
21 We executed the sales to the customer. You know, we  
22 wouldn't have executed them in the market unless we  
23 were doing a strategy, unless we were also buying  
24 securities.

25 Q. Okay. But where a customer made a specific

1 instruction to you to buy a specific stock, are you  
2 saying that you always executed those instructions?

3 A. The customer didn't usually give us  
4 instructions. These accounts are handled basically  
5 as sort of discretionary accounts. So once the  
6 customer opened the account to go into this  
7 particular strategy, the firm had the -- had the,  
8 you know, allowance to be able to execute the  
9 strategy whenever he saw fit.

10 Q. No, but I'm thinking of customers who were  
11 not in split strike, investment advisory customers  
12 who had you as their investment advisor but they  
13 instructed you as to what stocks to buy and sell.

14 A. We didn't -- we basically did not do that  
15 kind of business.

16 Q. Now, in the government's deferred  
17 prosecution agreement with JPMorgan Chase, the  
18 government and the bank stipulated that during the  
19 period from 2003 to 2008 you maintained on deposit  
20 at JPMorgan Chase three to six billion dollars. Is  
21 that correct?

22 A. Yes.

23 Q. Did that amount -- was that only between  
24 2003 or 2008 or had you done that earlier than 2003?

25 A. Well, there were certain -- we started

1 buying treasuries when we start the split strike  
2 conversions. So that would have been, you know, in  
3 the '90s.

4 Q. Okay. And to the best of your recollection  
5 at any given time how much investment advisory  
6 customers' money was held in U.S. treasuries?

7 A. Well, I would say basically the maximum  
8 that we had was between five firms we had about  
9 two-and-a-half billion dollars between Morgan  
10 Stanley, Lehman Brothers, Bear Stearns and Fidelity.  
11 Was that five firms? Four firms. And JP Morgan.

12 Q. Okay.

13 A. So I would say probably the maximum was  
14 probably about \$6 billion held in treasuries.

15 Q. Okay, okay. Did it fluctuate or did you  
16 instruct your staff to maintain that amount?

17 A. No. It pretty much fluctuated depending  
18 upon the monies that came in and the monies that --  
19 monies that came out.

20 Q. What percentage of the investment advisory  
21 customers' money was put in Treasury securities, if  
22 you can estimate that?

23 A. Well, I mean, the most we had -- I mean,  
24 the customer statements depending, you know, at the  
25 end was 60 some odd billion dollars.

1 Q. Not what the statements showed, but what  
2 you actually did.

3 A. What we actually did?

4 Q. Yeah. How --

5 A. I don't understand your question.

6 Q. Let me step back a minute. Were the people  
7 on the 17th, were any of the people on the 17th  
8 floor authorized to buy Treasury securities?

9 A. Yes.

10 Q. Who was authorized to buy Treasury  
11 securities?

12 A. Frank DiPascali, Eric Lipkin and a fellow  
13 by the name of Robert Romer.

14 Q. And they were -- what money were they  
15 authorized to use to buy the Treasury securities?

16 A. Whatever -- they followed the instructions  
17 of basically Frank DiPascali, who was the manager of  
18 that department. And the money, the money to buy  
19 the securities always came from customer money  
20 except for a small amount of treasuries or financial  
21 instruments that came from the operating operations  
22 of the market making proprietary trading side.

23 Q. Okay. So the money came from the 703  
24 account, is that what you're saying, except for  
25 the --

1 A. For the most part, yes.

2 Q. Except for the money that came from the BNY  
3 account?

4 A. Right.

5 Q. Okay. Now, did you ever have a lock-in  
6 period like hedge funds would have which would  
7 prevent a customer from immediately demanding a  
8 redemption on their money?

9 A. No.

10 Q. Was there any period of time from the end  
11 of 1993 to 2008 when you were unable to honor a  
12 customer redemption?

13 A. No.

14 Q. Was there anytime between 1993 and 2008  
15 when you felt that you couldn't redeem a customer's  
16 account unless you brought in new investment  
17 advisory customers?

18 A. No. Well, I would say during -- in 2008  
19 probably that half the market was -- was collapsing.  
20 There would have been -- had customers requested  
21 money, I wouldn't have been able to do it, but no  
22 one had ever requested it.

23 Q. Okay. So, well, you did have significant  
24 redemptions in 2008?

25 A. Yes, at the very end in December.

1 Q. Okay. And prior to December 2008 --

2 A. But there was always -- there was -- you  
3 know, I never got an official request for redemption  
4 that I didn't have money to cover it to my  
5 recollection other than maybe the last week in  
6 December.

7 Q. Okay.

8 A. The last, you know, week that I was in  
9 business.

10 Q. Okay. So in the entire period when you  
11 were not buying the split strike securities starting  
12 say late 1993 or early 1994, had you ever received a  
13 redemption request where you thought oh, my God,  
14 I've got to bring in a new customer to have the  
15 money to pay this?

16 A. No.

17 Q. Did you actively solicit new investment  
18 advisory customers?

19 A. No.

20 Q. Why not?

21 A. Because the firm was in a position that we  
22 were always turning away investors. We never --  
23 never solicited, you know, new monies coming in. As  
24 a matter of fact, we tried to return monies at times  
25 but met resistance with clients.



1 Q. We talked last time about the fact that you  
2 maintained clearing accounts with various banks?

3 A. Correct.

4 Q. And can you just review the banks with  
5 which you had clearing accounts?

6 A. Well, first of all, the firm itself was a  
7 self-clearing firm, which meant we had the ability  
8 to clear transactions. That was starting with the  
9 firm in 1960 through the very end, but most firms  
10 also had clearing arrangements with a number of  
11 banks to be able to service different types of the  
12 operations of the firm.

13 So the firm at one point had clearance  
14 facilities with -- initially with Meadowbrook  
15 National Bank, then, you know, also Commercial Bank  
16 of North America. There was then Irving Trust  
17 Company, Bank of New York, Bankers Trust,  
18 Manufacturers Hanover, Chase Manhattan Bank, Marine  
19 Midland Bank, Chemical Bank, JP Morgan Bank,  
20 Continental Illinois Bank. I think that pretty much  
21 covers it.

22 Q. M&T?

23 A. M&T, yes. M&T Bank.

24 Q. Now, what services did these banks provide  
25 to you?

1           A. Both loans, brokered and unbrokered loans,  
2           conversion, instructions to convert securities,  
3           drafts for election, you know, checking accounts,  
4           typical usually broker day loans, things -- you  
5           know, whatever, complete clearance facilities.

6           Q. Did they have custodial accounts where you  
7           maintained securities for customers?

8           A. Not that I'm aware of, no.

9           Q. Did you have custodial accounts with anyone  
10          where securities were maintained for customers?

11          A. Well, the -- we had securities at  
12          depositories, but they were not basically segregated  
13          for customers. That was the practice, quite  
14          frankly, that most brokerage firms never did any  
15          longer when securities -- as the industry progressed  
16          and you didn't have full physical securities in your  
17          own vaults.

18                 We always had some securities in our vault  
19          we had, but those are from many, many years ago.  
20          They were a relatively small amount of securities  
21          that we were holding or that we bought, you know;  
22          but for the most part all the securities were  
23          commingled, which was typical for a firm that  
24          operated the way we did where you had customers that  
25          were short securities.

1                   Whether or not we executed the transaction  
2                   or not, they had opened up, you know, accounts, what  
3                   would be deemed as a margin account, and that  
4                   automatically allows you to commingle the  
5                   securities.

6                   Q.   Okay.   So you did have -- you did have  
7                   physical possession of the securities with the  
8                   margin accounts?

9                   A.   When we were buying them, yes.

10                  Q.   Okay.   Now, you referenced the change from  
11                  physical securities to electronic securities.   Can  
12                  you pinpoint when that occurred?

13                  A.   I don't remember any longer.   I would say  
14                  sometime during the '90s.

15                  Q.   Would it help if I told you that the  
16                  Securities Investor Protection Act was enacted in  
17                  1970?

18                  A.   No.

19                  Q.   Okay.   Now, when you were doing the  
20                  convertible arbitrage, did you ever use a strategy  
21                  called legging in?

22                  A.   Always.

23                  Q.   Okay.   And can you explain what legging in  
24                  means?

25                  A.   Legging in means that when you're doing a

1 strategy, whether it be for convertible securities  
2 or for the split strike, you go in and you don't buy  
3 everything typically in one day.

4 You start -- when the firm makes a decision  
5 to effect a strategy, whether it be convertible  
6 bonds or whether it be a basket strategy and a split  
7 strike where you're buying, you know, a portfolio of  
8 securities, the skill of the strategy is to being  
9 able to judge the market.

10 So you -- if when you're going out and  
11 buying securities, you would start buying it let's  
12 say on a Monday, Tuesday, Wednesday, Thursday.  
13 Typically you would buy it over a four-day period  
14 was basically what our practice is. And you would  
15 have different prices during the four-day period.

16 And all of our strategies use what's  
17 defined as an average price transaction, which means  
18 we would then take the average price that we bought  
19 stock during that four-day period and that would be  
20 the -- you know, we'd figure what the average was  
21 that we paid and then we would -- we would send the  
22 customer a confirmation on the last day.

23 So let's say on a Thursday, we started on  
24 Monday. And if you start -- to make a simple  
25 example, let's say you did it over four days and you

1 paid -- you started buying stock at 50 and you wound  
2 up buying it at, you know, up to 51 and you had an  
3 average of 50-and-a-half, you would -- you would  
4 place five-and-a-half.

5 Q. Was that unique to you or was this  
6 something --

7 A. No. That's typical for any firm that is  
8 investing in a strategy and treating -- you know,  
9 that's treatable to customers the same in a  
10 particular strategy.

11 Q. Now, you testified last time that Mr.  
12 Dubinsky apparently lacked an understanding of that  
13 strategy?

14 A. Well, he -- he must have. He must have not  
15 understood the strategy because his report failed to  
16 -- failed to state that. So, for example, where  
17 Dubinsky, when he was trying to analyze the prices  
18 that a customer paid in relationship to the market,  
19 he would look on whatever the trade date was on the  
20 confirmation.

21 And the trade date on the confirmation, for  
22 example, would be -- an example I use would be the  
23 trade date would be Thursday's trade date. If the  
24 stock had traded at 51 and on that day if that was  
25 the higher, the lower the stock and the average was

1 50-and-a-half for the customer, there would be a  
2 difference. So it wouldn't match up. Now, the  
3 customer, the customer confirmation always stated --  
4 there was a legend on it that said that the  
5 transactions effected for the customer was an  
6 average price transaction.

7 So right away that would -- that would  
8 illustrate that he wasn't accounting for the -- for  
9 the fact that the transaction was an average price  
10 transaction.

11 The same thing would happen when you -- the  
12 same error he made when he accounted for volume  
13 because he would just look at the volume that  
14 occurred on the one day, on the date of the trade  
15 date, as opposed to the volume that happened on the  
16 four days. So, obviously, he's looking at the  
17 volume on one day when you should be looking at the  
18 volume on four days.

19 Q. Now, Mr. Madoff, Mr. Dubinsky testified at  
20 the Bonventry trial that the Trustee paid him over  
21 \$30 million to do his report. Did he at any time  
22 ever seek to talk to you?

23 A. No.

24 Q. To your knowledge did he or anyone on his  
25 behalf ever seek to meet with you to discuss how you

1 operated the business?

2 A. No.

3 Q. Did anyone working with the Trustee ever  
4 ask you any questions about how your convertible  
5 arbitrage trades were done?

6 A. No.

7 Q. Did anyone working with the Trustee ever  
8 question you about any activity of the firm that  
9 predated 1992?

10 A. No.

11 Q. Now, you mentioned with respect to the  
12 purchase of Treasury securities with the investment  
13 advisory customers' money that the purchases were  
14 done through Bear Stearns, Morgan Stanley, Fidelity,  
15 Lehman Brothers and JPMorgan Chase?

16 A. Right.

17 Q. Were there also purchases done directly by  
18 Frank DiPascali, Eric Lipkin and Robert Romer?

19 A. Correct.

20 MS. CHAITMAN: I'm going to mark as  
21 Exhibit 15, which is the next number from our last  
22 deposition, a compilation of trade tickets. I have  
23 two if you each want one.

24 (Customers Exhibit 15 was marked for  
25 identification.)

1 MS. FEIN: Thank you.

2 MR. SHEEHAN: Thank you.

3 Q. (By Ms. Chaitman) Mr. Madoff, do you  
4 recognize what these documents are?

5 A. Yes. They're -- they're a copy of the  
6 Bloomberg terminal execution, meaning a trade that  
7 was executed through a Bloomberg terminal.

8 Q. Okay. Now, could this be a phony document?

9 A. No.

10 Q. Why is that?

11 A. Because we've got the ability to -- to  
12 create something like this.

13 Q. Is that because it's a Bloomberg terminal?

14 A. Yes.

15 Q. So if we look at the first one, this was  
16 the trader was Eric Lipkin; right?

17 A. Uh-huh.

18 Q. The date was September 26, 2002; right?

19 A. Uh-huh.

20 Q. And the -- it was the purchase of a  
21 Treasury bill with a cost of \$998,461.94; is that  
22 right?

23 A. Yes.

24 Q. And this would have been purchased with  
25 money from the 703 account?



1 A. Yes.

2 Q. And it would have been held for the benefit  
3 of the investment advisory customers?

4 A. It would have been -- it would have been  
5 held at the firm for the benefit of the firm. We  
6 didn't segregate, you know, these securities.

7 Q. But if the money that was used to purchase  
8 this --

9 A. Uh-huh.

10 Q. -- came from the 703 account, would this  
11 show up, for example, on your focus reports?

12 A. This particular -- I don't know. I mean,  
13 the only trades that -- if it went through the  
14 Bloomberg terminal, typically that would show up --  
15 I don't know if it would show up on the focus  
16 report.

17 It depends upon whether the trade was  
18 bought for -- there were some trades that were  
19 bought -- well, not if it was bought by the people  
20 that you mentioned. They only have the authority to  
21 execute trades for client accounts, not for the  
22 firm's account.

23 Q. Okay. So I'm confused.

24 A. These securities would be held either at --  
25 typically it would be held at DTC or the Bank of New

1 York.

2 Q. Okay.

3 A. I mean, I can't tell from that. It depends  
4 upon where the trade would settle. Any of these  
5 Bloomberg trades that went through the Bloomberg  
6 terminal, it would actually be a money settlement  
7 for the transaction. Otherwise, you couldn't -- you  
8 couldn't do it.

9 Q. Okay. And that would be done through some  
10 ins --

11 A. It would be done through some -- typically  
12 through Bank of New York.

13 Q. Okay.

14 A. It could also have been done through JP  
15 Morgan as well in delivery.

16 Q. Okay, okay. You didn't have the ability  
17 yourself to clear Treasury security purchases?

18 A. Correct. We didn't have the authority to  
19 execute and clear.

20 Q. Treasury security purchases?

21 A. Right.

22 MS. CHAITMAN: Okay.

23 MR. SHEEHAN: Helen, just for the record,  
24 this seems to be -- you did call it a compilation,  
25 but since there were different productions, one is

1 AMF, another one is MAD Trustee, are you going to  
2 for the record tell us how this was put together or  
3 is that going to happen through your testimony?

4 MS. CHAITMAN: It's not, but I don't think  
5 that we have to take up his time to do that.

6 MR. SHEEHAN: Okay. We can do it later.

7 MS. CHAITMAN: Yeah, sure.

8 MR. SHEEHAN: All right. Just take care  
9 of it.

10 MS. CHAITMAN: They were all produced by  
11 the Trustee.

12 MR. SHEEHAN: Okay.

13 Q. (By Ms. Chaitman) If you -- these are not  
14 in continuous order. They didn't come from one  
15 place, but I'm showing you one that was done where  
16 the trader is Erin Reardon.

17 A. Ellen Reardon?

18 Q. Erin Reardon.

19 A. Erin, yes.

20 MR. SHEEHAN: What's the Bates number on  
21 that?

22 MS. CHAITMAN: It's MAD TEE 00118284.

23 MR. SHEEHAN: Okay.

24 Q. (By Ms. Chaitman) Did she work under Frank  
25 DiPascali?

1 A. Yes.

2 Q. And then two pages on there is one executed  
3 by Robert Romer?

4 A. Yes, same.

5 Q. He worked for Frank DiPascali?

6 A. Yes.

7 Q. Now, I'm skipping to a page which is  
8 Public-USAO 0960973. Can you identify why that  
9 format is different? Is that a different kind of  
10 transaction?

11 A. I don't know what this is. I mean, I'm not  
12 that familiar with it. It looks like a ticket for  
13 -- for a treasury, trading of a treasury, but it's  
14 actually from the Bloomberg terminals on here. So  
15 it must be --

16 Q. Okay. A different format?

17 A. -- a different format, right.

18 Q. Okay. And then on the next page, which is  
19 Public-USAO 0961013, it indicates that the trader is  
20 Frank?

21 A. Right.

22 Q. Is that Frank DiPascali?

23 A. Yes.

24 Q. And was it Frank's responsibility to  
25 maintain the portfolio Treasury securities for the

1 703 account customers?

2 A. Yes.

3 Q. Is it fair to say that he would direct the  
4 work of Eric Lipkin and Robert Romer?

5 A. Yes.

6 Q. And they reported to Frank?

7 A. Yes.

8 Q. Now, what was your purpose in instructing  
9 Frank to maintain a portfolio of Treasury securities  
10 up to \$6 billion using the 703 account money?

11 A. We had to put the money somewhere, so if we  
12 were -- if it wasn't -- we would never keep the  
13 money in cash. So if we weren't buying the  
14 securities, we would put it into -- we would put it  
15 into treasuries.

16 Q. Okay. And did you have some thought that  
17 the three to six billion -- that was at JPMorgan  
18 Chase. That the up to six billion in Treasury  
19 securities was intended to protect any of your  
20 customers?

21 A. Well, if it was -- it was customer money,  
22 you know, yes.

23 Q. Okay. And in your mind over the years did  
24 you have customers, investment advisory customers  
25 that you wanted to protect more than others?

1 A. No.

2 Q. Were you concerned about protecting the  
3 European investors?

4 A. No.

5 Q. Why is that?

6 A. Well, because I was aware of the fact that,  
7 first of all, they really weren't my customers.  
8 They were customers of hedge funds. I was aware of  
9 the fact that the -- that most of the hedge funds,  
10 if not all of them, had structured product  
11 arrangements with banks that they were guaranteed,  
12 their principal was guaranteed and they were sharing  
13 in the profits of the transaction.

14 So it was as far as -- I mean, basically,  
15 they were all my customers. So I was obligated from  
16 a legal standpoint whether -- you know, whether I  
17 wanted to or not; but I would say that the -- I  
18 looked at the individual clients which would -- who  
19 had direct accounts with me differently than I did  
20 with the hedge funds, particularly because the hedge  
21 fund money that was pouring in was the thing that  
22 caused me the problem.

23 Q. What about the feeder funds? Are you  
24 putting them in the category of the hedge funds?

25 A. The who?

1 Q. The feeder funds?

2 A. Those are the hedge funds.

3 Q. Those are the hedge funds. Okay. So were  
4 you buying the Treasury securities then to protect  
5 the private customers as opposed to the hedge funds?

6 A. I didn't look at it, you know. I didn't  
7 isolate it one over the other because I knew I was  
8 basically obligated for -- you know, for all of it.

9 Q. Okay. Now, you said that you purchased  
10 Treasury securities with the 703 account money  
11 through the five institutions that you named?

12 A. Right.

13 Q. Bear Stearns, Fidelity, Lehman Brothers,  
14 JPMorgan Chase and Morgan Stanley --

15 A. Right.

16 Q. -- is that right?

17 A. Yes.

18 Q. Okay. It was only those five firms?

19 A. Yes.

20 Q. Okay. And did you maintain a consistent  
21 portfolio of Treasury securities at each of those  
22 institutions?

23 A. They were rarely sold unless they matured  
24 and then we repurchased, you know, different, you  
25 know, Treasury bills. Yes, I mean, for the most

1 part the monies in those accounts built and became,  
2 you know, more and more up to the maximum, which  
3 was, I think, \$500 million pretty much in each  
4 account.

5 Q. So you maintained 500 million of Treasury  
6 securities at each of those five firms?

7 A. Pretty much, yes.

8 Q. Okay. And then in addition you had the  
9 portfolio that was purchased directly --

10 A. Correct.

11 Q. -- by the 17th floor people?

12 A. Right.

13 Q. Now, the market making and proprietary  
14 trading people were buying and selling securities;  
15 right?

16 A. Yes.

17 Q. And what kind of records were kept of the  
18 securities that were held by the firm as of say  
19 month end of each month? Was there a record kept of  
20 an inventory of securities that were owned by the  
21 firm as of the end of each month?

22 A. That the firm was long you're talking  
23 about?

24 Q. Yes.

25 A. Yeah. That was -- you know, you were



1 required to -- you had trading ledgers that  
2 reflected what was long by the market makers or the  
3 proprietary traders in the firm's investment  
4 account. There were trading ledgers and then there  
5 were -- there's what's called a securities record,  
6 stock record.

7 Q. Is it called a trade blotter?

8 A. There's trade blotters, yes.

9 Q. Is that the same thing?

10 A. Same thing.

11 Q. Okay. So if I -- if I --

12 A. Trade blotters basically reflect also  
13 monies -- monies in and monies out for the payment  
14 of the securities. The trading ledgers just shows  
15 the inventory long and short, and same for the stock  
16 record. Stock record would reflect where the  
17 securities are held.

18 Q. Okay. So I just want to get the terms.  
19 There are trade blotters?

20 A. Trading ledgers.

21 Q. And it's called a trading ledger?

22 A. Correct.

23 Q. Okay.

24 A. You know, which would -- trading ledgers  
25 would be for the market making, proprietary trading

1 and the investment account, investment ledger.

2 Q. Okay.

3 A. And then there's what's known as a stock  
4 record, which breaks down by each security.

5 Q. So each of those reports was done as of  
6 month end?

7 A. Daily.

8 Q. They were done daily?

9 A. The reports were effected daily.

10 Q. Okay. And did you -- through  
11 December 11th, 2008 did you maintain those records?

12 A. Yes.

13 Q. So they should have been there for the  
14 Trustee when he took over?

15 A. They would be, yeah.

16 Q. Okay. And were they all electronic records  
17 or were they paper records?

18 A. No. They were -- well, they were all done  
19 through computers.

20 Q. Okay. Who was responsible within the firm  
21 for generating these reports?

22 A. Well, depends upon, you know, where they  
23 were executed. Basically, Dan Bonventry was the  
24 operations director, so he had the final  
25 responsibility. The records themselves were

1 generated by the systems people. And depending upon  
2 whether it was generated by the Stratus system,  
3 which handled basically all the -- all the market  
4 making, proprietary trading side of the firm, or  
5 whether it was done by the investment advisory side,  
6 that would have been through the AS/400.

7 Q. Okay. But the investment advisory side  
8 would show -- would it show securities that actually  
9 hadn't been purchased? In other words, the split  
10 strike securities that weren't purchased, would  
11 they -- would that be listed on that report?

12 A. That's correct.

13 Q. Okay. So that's the trading ledger?

14 A. Right.

15 Q. Okay. So --

16 A. It would be -- it would be the customer  
17 ledger. There's a customer ledger.

18 Q. There's a customer ledger. So if I wanted  
19 to get an accurate picture of what securities the  
20 firm actually held as of any given day, what would  
21 be the best document to look at?

22 A. You would have to look at the -- the  
23 trading ledgers.

24 Q. The trading ledgers. Okay. Now, at  
25 JPMorgan Chase did you have an account or accounts

1 other than the 703 account?

2 A. Yeah. They had what they called a  
3 controlled disbursements account, which most  
4 brokerage firms maintain, so that the money was only  
5 transferred -- it was part of the 703 account, but  
6 it was so that they didn't take the money out of the  
7 account until the checks would hit from the checks  
8 that you issued it to. So it was like a flow of  
9 funds account.

10 Q. Was there a 509 account? Do you remember  
11 that?

12 A. I don't remember the number.

13 Q. You don't remember. Okay.

14 A. I mean, it was related to the 703 account.

15 MS. CHAITMAN: Okay.

16 MR. GOLDMAN: I'm going to direct this to  
17 the reporter. Do you need a break? Okay.

18 MR. SHEEHAN: I could use a bio break in  
19 about five minutes.

20 THE WITNESS: A what break?

21 MR. SHEEHAN: Bio break.

22 THE WITNESS: Bio break?

23 MR. SHEEHAN: Men's room.

24 THE WITNESS: Oh, okay.

25 MS. CHAITMAN: I'm going to mark as

1 Exhibit 16 a JPMorgan Chase account statement for  
2 the 703 account dated February 2001.

3 MR. GOLDMAN: I want to clear something up  
4 just so we know where they are.

5 MS. CHAITMAN: Yeah.

6 MR. GOLDMAN: The trading ledgers or  
7 customer accounts that we were talking about that  
8 you were just being asked about --

9 THE WITNESS: I don't understand the  
10 question.

11 MR. GOLDMAN: I just want to ask you some  
12 questions about where you could look at the end of  
13 the month to see what was held by the company.

14 THE WITNESS: Right.

15 MR. GOLDMAN: Okay. Were those  
16 electronically maintained?

17 THE WITNESS: Yes.

18 MR. GOLDMAN: Okay.

19 MR. SHEEHAN: That's all right.

20 (Customers Exhibit Number 16 was marked  
21 for identification.)

22 Q. (By Ms. Chaitman) Bernie, do you recognize  
23 this as a 703 account statement?

24 A. Yes.

25 Q. And if you'd turn to page four of

1 thirty-two?

2 A. Four of thirty-two?

3 MS. CHAITMAN: Yeah.

4 MS. FEIN: Is that the last Bates? It's  
5 777; is that right?

6 MS. CHAITMAN: Yes.

7 THE WITNESS: Uh-huh.

8 Q. (By Ms. Chaitman) If you look at the entry  
9 on the 1st of February for \$55 million and it says  
10 debit memorandum, reference purchase of ticket  
11 number. Do you see that? It's down here, 55  
12 million?

13 A. Yeah, okay. Uh-huh.

14 Q. Do you know what that is?

15 A. It's a debit, so I'm assuming it's -- I'm  
16 assuming it's a check.

17 Q. Were you investing through JPMorgan Chase  
18 funds that you had on account?

19 A. Purchase of -- I'm not sure what the  
20 question is.

21 Q. Were you -- that \$55 million, were you  
22 instructing Chase to invest that money in some  
23 interest earning security?

24 A. Oh, they -- we must have, but they -- I  
25 don't know if that was a sweep account. It was 55

1 million. What did they purchase? I can't tell from  
2 here.

3 Q. Well, you would have to look at the ticket,  
4 001478.

5 A. Well, basically they wouldn't purchase  
6 anything unless we instructed them to do it, but  
7 they had -- all banks have what they call a sweep  
8 account, you know, where they swept the money that  
9 was cash that was in an account, they put it into a  
10 financial instrument so that it was an interest  
11 bearing account.

12 Q. Okay. And would you tell them what to  
13 invest in it?

14 A. No. They would do that themselves.

15 Q. Okay. If you'd just look up a little bit,  
16 there's a \$13 million entry on February 1st?

17 A. Right.

18 Q. And it says --

19 A. Nassau.

20 Q. -- Nassau deposit taken?

21 A. Right.

22 Q. Attention, Tony Tiletnick?

23 A. Right.

24 Q. And it says to establish your deposit for  
25 purchase or sale of Chemical commercial paper?

1 A. Commercial paper, right.

2 Q. Right. Do you see that?

3 A. Yes.

4 Q. Who was Tony Tiletnick?

5 A. He was the -- around the cashiering  
6 department.

7 Q. Was he responsible for dealing with  
8 JPMorgan Chase?

9 A. Yes, uh-huh.

10 Q. Was he responsible to make sure that the  
11 money was invested so that it was earning money?

12 A. Yes.

13 Q. Okay. So was it your general practice to  
14 make sure that the money in the 703 account was  
15 always invested in securities so that it was earning  
16 money?

17 A. Yes. We would never keep it just in cash.  
18 That's what that -- that's why I'm referring to a  
19 sweep account. They would sweep their money into an  
20 interest bearing account.

21 Q. Okay. But if it's Chemical commercial  
22 paper --

23 A. Right.

24 Q. -- was that -- would that have had to be a  
25 specific instruction?



1           A. No. They would have -- they would do that.  
2       You know, well, I mean, Tony would tell them -- you  
3       know, Tony knew that they were investing it, but  
4       they were -- he, obviously, would have had a  
5       conversation with someone at the bank because at one  
6       point we told them not to use -- that we didn't want  
7       money going into Nassau because it was a -- it  
8       wasn't -- there was concern that, you know,  
9       commercial paper that was not, you know, in the U.S.  
10      was more at risk. Turned out never to be a problem,  
11      but it was an issue at one point.

12           Q. So where -- if I look at page nine of  
13      thirty-two, let me show you which one that is.  
14      There's a hundred million dollar debit memorandum on  
15      February 5th. Do you see that?

16           A. Uh-huh.

17           Q. It's Bates number 1458787.

18           A. Right, uh-huh.

19           MS. FEIN: Thanks.

20           MR. SHEEHAN: Yeah.

21           Q. (By Ms. Chaitman) So do you know what that  
22      would have been purchasing?

23           A. It would have -- if it's not a -- it,  
24      obviously, must have been a financial instrument.  
25      Whether it would be a CD or whether it be a

1 Treasury, I can't tell.

2 Q. Okay. Did Tony Tiletick consult with you  
3 on a daily basis --

4 A. No.

5 Q. -- or did he have authority to make these  
6 decisions?

7 A. No. He had authority to do it himself.

8 Q. And in essence what were his instructions?

9 A. He was in charge of paying securities, you  
10 know, and settling up with the clearing houses.

11 Q. But in terms of the investment of deposits  
12 that were in the 703 account?

13 A. He would put whatever money that wasn't  
14 being -- he typically wouldn't buy treasuries  
15 himself. He was not someone that would normally buy  
16 treasuries. He would basically be involved with  
17 purchasing financial instruments like CDs or  
18 treasuries for the sweep account. They weren't  
19 typically large amounts. I mean by large amounts,  
20 they weren't billions of dollars.

21 MS. CHAITMAN: Okay. All right. You want  
22 to take a break?

23 MR. SHEEHAN: Sure.

24 THE VIDEOGRAPHER: Going off the record.

25 This ends disc number one. The time is 10:20 a.m.

1 (A recess was taken and Customers Exhibit  
2 Number 17 was marked for identification.)

3 THE VIDEOGRAPHER: Back on the record.  
4 This begins disc number two. The time is 10:35 a.m.

5 Q. (By Ms. Chaitman) Okay. I've marked as  
6 Exhibit 17 a June 2001 statement for the 703  
7 account.

8 THE VIDEOGRAPHER: Ms. Chaitman, your  
9 microphone.

10 MS. CHAITMAN: It's on.

11 THE VIDEOGRAPHER: Okay. Raise it up  
12 higher. It's being covered.

13 Q. (By Ms. Chaitman) And I'm going to just  
14 take a look at page seven of forty-four. Mr.  
15 Madoff --

16 MR. SHEEHAN: What's the Bates number?

17 MS. CHAITMAN: The Bates number is -- it  
18 ends --

19 MR. SHEEHAN: Oh, we have it, seven of  
20 forty-four. I'm sorry.

21 MS. CHAITMAN: Sorry.

22 MR. SHEEHAN: Okay. Go ahead.

23 Q. (By Ms. Chaitman) If you look at --  
24 there's on June 4th at the bottom of the page,  
25 there's a \$50 million debit?

1 A. Uh-huh.

2 Q. And it says purchase of slash sale of  
3 JPMorgan Chase. Is that commercial paper?

4 A. Yes.

5 Q. And then reference purchase of Chemical  
6 commercial paper?

7 A. Uh-huh.

8 Q. Okay. And then above that there's a  
9 \$35 million debit memorandum for purchase of ticket  
10 and then it's redacted?

11 A. Uh-huh.

12 Q. Okay. And then above that it's  
13 12-and-a-half million and it says Nassau deposit  
14 taken account?

15 A. Right.

16 Q. Can you describe what these are?

17 A. Those are just financial instruments that  
18 are invested so that the money is not just sitting  
19 there not earning any interest overnight.

20 Q. Okay, okay. And, again, was Tony Tiletnick  
21 authorized to do this on a daily basis?

22 A. Yes.

23 Q. Okay. And is it fair to say that the goal  
24 was to earn money on the investment advisory  
25 customers' money?

1 A. Yes.

2 (Customers Exhibit Number 18 was marked  
3 for identification.)

4 Q. (By Ms. Chaitman) I'm marking as  
5 Exhibit 18 a 703 account statement for October 2002.  
6 And Mr. Madoff, I'm going to open this to Bates  
7 number 576, which is page eight of fifty-five. Mr.  
8 Madoff, we're looking at a statement for  
9 October 2002.

10 And if we look at the entry on  
11 October 1st, there's a \$279 million entry for --  
12 it's a debit for the purchase of slash sale of JP  
13 Morgan commercial paper --

14 A. Right.

15 Q. -- is that right?

16 A. Uh-huh.

17 Q. And, again, was this done on -- by Tony  
18 Tiletznick under your instructions?

19 A. Correct, yes, yes.

20 Q. Okay. Now, were there times of the year  
21 when you tended to have more cash to invest than  
22 others or was this a general?

23 A. No, no. It was just -- was just a normal  
24 flow of funds.

25 (Customers Exhibit Number 19 was marked

1 for identification.)

2 Q. (By Ms. Chaitman) Okay. We'll go through  
3 a few more of these just because they cover  
4 different periods. This is -- will be Exhibit 19  
5 and this covers the period of November -- of  
6 December 2003. And if you could look at page 41 of  
7 65? Let me open it up for you.

8 A. Uh-huh.

9 Q. There are two entries for December 22nd  
10 where \$50 million --

11 A. Right.

12 Q. -- is being invested; is that right?

13 A. Yes.

14 MS. CHAITMAN: Okay. I'm going to mark as  
15 Exhibit 20 the statement for December 2004.

16 (Customers Exhibit Number 20 was marked  
17 for identification.)

18 MS. FEIN: Thanks.

19 Q. (By Ms. Chaitman) Some of them I have -- I  
20 don't know why some of them I have four and some of  
21 them I don't, but if you look at page 35 of 63,  
22 which bears Bates stamp number 1486? Now, this is  
23 -- this is December of 2004 and do you see that  
24 there's a \$30 million --

25 A. Right.

1 Q. -- Nassau deposit ticket?

2 A. Uh-huh.

3 Q. And then there's a \$90 million purchase?

4 A. Right.

5 Q. Is it fair to say that those are again --

6 A. Uh-huh.

7 Q. -- investments?

8 A. Yes.

9 Q. So that the investment advisory customers  
10 were earning money on their money?

11 A. Uh-huh.

12 Q. And can you explain what the Nassau deposit  
13 is?

14 A. It's a CD, commercial paper of the -- I  
15 don't know how to describe it to you, but it's no  
16 different than JP Morgan. It's their branch in  
17 Nassau.

18 MS. CHAITMAN: Okay, okay. I've just got  
19 two more of these. I'm marking as Exhibit 21 a  
20 June 2007 statement from JPMorgan Chase.

21 (Customers Exhibit Number 21 was marked  
22 for identification.)

23 MS. FEIN: Thank you.

24 Q. (By Ms. Chaitman) And if you look on page  
25 16 of 66 which bears Bates numbers 3654, this has an

1 entry for 50 million on June 6th, which is AIP  
2 overnight investment?

3 A. Uh-huh.

4 Q. Purchase of JPMorgan Chase commercial  
5 paper?

6 A. Right, uh-huh.

7 Q. And then the next one is 150 million and  
8 that's -- can you explain what that is? It seems to  
9 have an interest rate of 5.1407 percent; is that  
10 right?

11 A. Yes.

12 Q. Can you tell what that is?

13 A. You know, I don't know. I mean, it must be  
14 some sort of commercial paper of JP Morgan.

15 Q. Okay. And then the next entry on June 6th  
16 is 600 million and that's invested in short-term  
17 derivatives; is that right?

18 A. Where is that? Six hundred million?

19 Q. Six hundred million is -- it's June 6th.

20 A. It says JP Morgan short-term derivatives.  
21 I don't know what that is. It must be a -- you  
22 know, it must be some sort of commercial paper that  
23 is a financial instrument.

24 Q. Okay. And, again, is it fair to say that  
25 even in 2007 it was Tony Tiletnick who had handled



1 these investments?

2 A. I don't -- he died at one point. It might  
3 have been his brother, Walter Tiletnick, took over  
4 his job at one point. I think in 2007 he was  
5 already -- he had already died.

6 MS. CHAITMAN: Okay, okay.

7 MR. GOLDMAN: I didn't know whether you  
8 could hear with the microphone.

9 THE WITNESS: Uh-huh.

10 MS. CHAITMAN: I'm going to mark as  
11 Exhibit 22 a Bear Stearns statement dated April --  
12 dated August 1, 2005.

13 MR. SHEEHAN: Twenty-three?

14 MS. FEIN: Twenty-two.

15 MR. SHEEHAN: Twenty-two. My fault.

16 (Customers Exhibit Number 22 was marked  
17 for identification.)

18 Q. (By Ms. Chaitman) Twenty-two. Can you  
19 identify this document, Mr. Madoff?

20 A. It's Bear Stearns' account statement.

21 Q. Did you -- what was the time period that  
22 you transacted business with Bear Stearns?

23 A. I transacted business with Bear Stearns,  
24 you know, from the time I started my firm over the  
25 years. So it was probably the 1960s on, you know,

1 through 2008.

2 Q. What kind of business did you do with Bear  
3 Stearns?

4 A. My market makers and proprietary traders  
5 traded with them, you know, on a regular basis. We  
6 executed trades for their customers for -- you know,  
7 we were a wholesaler, a market maker. So we did  
8 business with, you know, hundreds of brokerage  
9 firms, Bear Stearns being one of them.

10 Q. Is it fair to say that you did billions of  
11 dollars a year in business with Bear Stearns?

12 A. With Bear Stearns, yes, certainly. I mean,  
13 I think we probably traded a trillion dollars a year  
14 in general with Wall Street.

15 Q. With everyone?

16 A. Yes.

17 Q. Now, did you have more than one account at  
18 Bear Stearns?

19 A. No. We only had one -- well, I guess my  
20 wife had an account at Bear Stearns, you know, just  
21 a brokerage account for herself; but the firm, you  
22 know, only had -- they had Treasury -- an account  
23 where we bought Treasury bonds and then we had -- we  
24 executed trades on the exchanges through Bear  
25 Stearns because they were the clearing broker for

1 Cohmad Securities, which is a firm that we owned.  
2 We were the owners of that.

3 Q. For Cohmad?

4 A. For Cohmad.

5 Q. Okay, okay. So is this a statement for the  
6 securities account because on the second page it  
7 lists different securities?

8 A. Yeah, yes. It must have been -- yeah.  
9 This is the securities.

10 Q. Now, why would -- I mean, these seem to  
11 indicate that the transactions were sold, bought,  
12 received, delivered?

13 A. Uh-huh.

14 Q. Why would you have used Bear Stearns to buy  
15 securities instead of buying them yourself?

16 A. Because we're not a member of the New York  
17 Stock Exchange. Bear Stearns was. So if we bought  
18 an executed trade on the floor of the exchange and  
19 we weren't a market maker in that security, we would  
20 go through Bear Stearns. It could have been  
21 probably for like proprietary traders.

22 Q. Okay. Now, you've testified that you had  
23 two accounts at Bear Stearns. One was to hold the  
24 Treasury securities that were purchased and one was  
25 trading?

1 A. It would have been for proprietary and  
2 market making trading activity.

3 Q. Okay, okay. So if I wanted to get the  
4 evidence of the Treasury securities that were  
5 purchased with the 703 account money, I would have  
6 to get the statements relating to the Treasury  
7 securities?

8 A. Correct.

9 Q. Okay. And did you maintain those records?

10 A. Yeah. They would have been at the firm,  
11 yeah.

12 (Customers Exhibit Number 23 was marked  
13 for identification.)

14 Q. (By Ms. Chaitman) Okay. I'm going to mark  
15 as Exhibit 23 a document which was produced by the  
16 Trustee. Now, this document consists of a number of  
17 different pages. And if you would, Mr. Madoff, I'd  
18 like you to explain to me to the best of your  
19 ability what each of these pages represents.

20 A. Well, the first page is -- is an account  
21 for Cohmad Securities, which is an account -- which  
22 is a firm that we used to execute certain trades for  
23 Bear Stearns. If it was a -- if it was what's  
24 called a dot trade, a trade that they had a dot  
25 machine that went directly down the floor to Bear

1 Stearns, that would be a firm that -- that would be  
2 part of our market making or proprietary trading  
3 business.

4 Q. Okay. And the second page?

5 A. The same.

6 Q. Okay. So this is the -- the second page,  
7 which is Bates numbered ending in 14, says buy SEG?

8 A. Uh-huh.

9 Q. That's a stock; right?

10 A. Right.

11 Q. Okay. And then on the sell line it says  
12 hold PR something, OUS. Do you know what that is?

13 A. No.

14 Q. Okay. So is this a document that would  
15 have been generated by Bear Stearns or --

16 A. Yes. This is.

17 Q. Okay, okay. If you look at page 16, which  
18 -- do you recognize the handwriting on this page?

19 A. No.

20 Q. This is dated November 11th, '94 and the  
21 handwritten note says open account for Madoff. Do  
22 you see that? Here. Open account?

23 A. Oh, handwritten, yeah.

24 Q. Do you know what that is?

25 A. No. This looks like Miller, you know,

1 Tabak and Hirsch. It probably is probably an option  
2 account.

3 Q. Were they clients of yours?

4 A. No. They must have been -- this isn't Bear  
5 Stearns. This is the -- they're another  
6 broker-dealer --

7 Q. Okay.

8 A. -- that we must have done. It's an option  
9 account --

10 Q. Okay.

11 A. -- that was part of our hedging, probably  
12 our proprietary trading department.

13 Q. If you look at the third to the last page  
14 of this collection of documents --

15 A. Uh-huh.

16 Q. -- this is dated January 30th, 1985 and it  
17 seems to -- it says please install a restricted  
18 centrex line to existing Turret equipment at Bernard  
19 Madoff. Do you have any idea what that was about?

20 A. No. It's the communications department.  
21 So it must be, you know, one of numerous, you know,  
22 systems lines that we had to -- you know, we had  
23 hundreds of these types of lines to different  
24 brokerage firms so that we could route orders  
25 directly through them for our market making and

1 proprietary trading.

2 (Customers Exhibit Number 24 was marked  
3 for identification.)

4 Q. (By Ms. Chaitman) Okay. I'm going to mark  
5 as Exhibit 24 a statement of account, and I'm  
6 wondering if you can identify that. It bears a  
7 Bates number MS 236. Is this a Morgan Stanley  
8 statement? You can --

9 A. I'm trying. Everything seems to be  
10 redacted. I don't know.

11 Q. Right. I believe that the MS means it was  
12 produced to the Trustee by Morgan Stanley.

13 A. Okay. It probably is because it's Treasury  
14 bills.

15 MR. GOLDMAN: I think it is because if you  
16 look on the last page, they have a note about  
17 retirement accounts and review with your Morgan  
18 Stanley financial advisor. It's unlikely one bank  
19 is soliciting for another bank, so I think you can  
20 conclude it's a Morgan Stanley statement.

21 THE WITNESS: Uh-huh.

22 Q. (By Ms. Chaitman) So am I correct that  
23 this is showing that you had one-and-a-half million  
24 dollars in income from this account as of March 8th,  
25 2003? Am I reading that correctly?

1 A. What page are you on?

2 Q. On the first page.

3 A. On the first page?

4 Q. It looks like -- it looks like Morgan  
5 Stanley is holding Treasury bills; right?

6 A. Uh-huh, right.

7 Q. Okay. And then it has a liquid asset fund  
8 of about 9.7 billion. Do you see that?

9 A. Nine point seven billion? No.

10 Q. No, million. Excuse me.

11 A. Nine million, right.

12 Q. Excuse me, excuse me. Yes, of course.

13 A. Yeah. Right. A million five hundred  
14 thousand dollars was the yearly income.

15 Q. Okay. To the best of your recollection did  
16 you have more than one account at Morgan Stanley?

17 A. Not for treasuries. We would have had only  
18 one account.

19 Q. One account for treasuries?

20 A. Right.

21 Q. But you would have had accounts for  
22 something --

23 A. Well, we also executed trades for Morgan  
24 Stanley.

25 (Customer Exhibit Number 25 was marked for



1 identification.)

2 Q. (By Ms. Chaitman) Okay. I'm going to mark  
3 as Exhibit 25 a document which is a JPMorgan Chase  
4 position summary. So Mr. Madoff, did you have a  
5 separate account at JPMorgan Chase which held the  
6 Treasury bills for the --

7 A. Yes.

8 Q. -- 703 account customers?

9 A. Uh-huh.

10 Q. Can you identify this document? Is it in a  
11 form that you've seen before?

12 A. I don't know what -- I mean, I typically  
13 wouldn't look at these statements, so looks to me  
14 just like a -- you know, a typical Treasury bond  
15 account where we bought treasuries. It lists all  
16 the activity as of April 2008.

17 Q. Okay. So if you had at JPMorgan Chase, you  
18 had about 2.8 billion, right, in Treasury  
19 securities?

20 A. Let me see. Yes.

21 Q. And then you maintained about 500 million  
22 at each of those other four institutions?

23 A. Right.

24 Q. So that would have been 2.8 and then it  
25 would have been 4.8; right?

1 A. Right.

2 Q. And then you had Treasury securities that  
3 were purchased directly by --

4 A. Right.

5 Q. -- Frank DiPascali?

6 A. Right. It would be at DTC. Those would  
7 have been -- no. Those would have been by -- those  
8 would have been bought by Frank.

9 (Customers Exhibit Number 26 was marked  
10 for identification.)

11 Q. (By Ms. Chaitman) Okay. I'm going to mark  
12 as Exhibit 26 what I believe is a Fidelity  
13 statement. Can you identify this?

14 A. Uh-huh.

15 Q. Is it a Fidelity statement?

16 A. Yes.

17 Q. So they use the trade name Premium  
18 Services?

19 A. Uh-huh.

20 Q. And this statement is dated January 31,  
21 1999. So what does the statement show that Fidelity  
22 was holding in U.S. Treasury securities?

23 A. Looks like 205 million.

24 Q. Okay. And these were bearing interest of  
25 5.25 percent and 5.375 percent?

1 A. Right, uh-huh.

2 Q. And was this purchased with money from the  
3 703 account?

4 A. Yes.

5 (Customers Exhibit Number 27 was marked  
6 for identification.)

7 Q. (By Ms. Chaitman) I've marked as  
8 Exhibit 27 an August 31, 1991 statement of  
9 Clothmasters, Inc. Mr. Madoff, was Clothmasters an  
10 investment advisory customer?

11 A. I would assume so, yes.

12 Q. Okay. And this statement is dated August  
13 31, 1991. Can you tell what trading strategy this  
14 statement reflects?

15 MR. GOLDMAN: I'm going to step out for a  
16 second.

17 MS. CHAITMAN: Sure.

18 THE WITNESS: This looks like a -- it  
19 looks like a split strike trade via equity. It  
20 looks like a basket of securities that were part of  
21 the split strike transaction.

22 Q. (By Ms. Chaitman) Okay. And as of  
23 August 31, 1991 were you actually purchasing the  
24 securities?

25 A. Yes.

1 (Customers Exhibit Number 28 was marked  
2 for identification.)

3 Q. (By Ms. Chaitman) I'm marking as  
4 Exhibit 28 a document which is called Account  
5 Canada. Can you tell me what this is?

6 A. Looks like it says Canadian dollars, so  
7 this must have been part of our proprietary trading,  
8 I think. I doubt whether this is -- I doubt whether  
9 this is a customer.

10 Q. So this is a record of investments that the  
11 firm made in Canadian dollars?

12 A. Right.

13 Q. Is this a report that was regularly  
14 prepared by your firm?

15 A. I don't know what this is. I mean, you  
16 know, I'm not familiar with this, so, you know --

17 Q. Okay. I don't want you to guess if --

18 A. No. I don't know.

19 MS. CHAITMAN: Okay.

20 MR. GOLDMAN: Do you need to eat?

21 THE WITNESS: Yeah. Whenever you're --

22 MR. GOLDMAN: They have your food outside.

23 THE WITNESS: Huh?

24 MR. GOLDMAN: I checked. They have your  
25 food outside.

1 THE WITNESS: All right. I'm okay for  
2 now.

3 MS. CHAITMAN: Do you want to? Do you  
4 want to?

5 THE WITNESS: No. It's all right.

6 MS. CHAITMAN: You sure?

7 MR. SHEEHAN: Whenever you're ready, just  
8 tell us.

9 THE WITNESS: Okay.

10 MR. SHEEHAN: We're not going anywhere.

11 THE WITNESS: I don't know how long she's  
12 going to be with this. What are you doing?

13 MS. CHAITMAN: Well, I --

14 MR. SHEEHAN: I think we're looking at all  
15 day.

16 CHAITMAN: No, but if you want -- do you  
17 want to take a break? Is this when you normally eat  
18 lunch? Why don't we --

19 MR. SHEEHAN: Why don't we just do it?

20 MS. CHAITMAN: Yeah.

21 THE WITNESS: Okay.

22 THE VIDEOGRAPHER: Going off the record.  
23 The time is 11:09 a.m.

24 (A luncheon recess was taken.)

25 THE VIDEOGRAPHER: Back on the record.

1 The time is 11:29 a.m.

2 Q. (By Ms. Chaitman) Just to review, Mr.  
3 Madoff, if I wanted to get a full picture of the  
4 Treasury securities that were purchased with money  
5 from the 703 account as of any point in time from  
6 say 1994 on when you say that the split strike,  
7 that's when you stopped writing securities for the  
8 customers, I would have to get the statements from  
9 Bear Stearns; right?

10 A. (Witness nods head.)

11 Q. The statements from Morgan Stanley?

12 A. Right.

13 Q. The statements from Fidelity?

14 A. Right.

15 Q. The statements from Lehman Brothers?

16 A. Right.

17 Q. And I would have to get the JPMorgan Chase  
18 statements like the one we looked at, which was the  
19 account that held the Treasury securities?

20 A. Correct.

21 Q. Okay. And if I wanted to get a complete  
22 picture of the securities that your firm held that  
23 were long positions that you actually held, I would  
24 have to look at the DTC records?

25 A. Correct.

1 Q. I'd have to look at -- were there other  
2 places that you held securities? Would I have to  
3 look at, say, your account at Bear Stearns?

4 A. You would have to look at the banks if  
5 there were -- if there were bank loans.

6 Q. Because if you borrowed from a bank, you  
7 would have pledged the securities to the bank?

8 A. Right. Typically they would be held at  
9 DTC, but they would be in the bank's account at DTC.  
10 They would be journaled over to the bank. So you'd  
11 have to look at the DTC -- you'd have look at the --  
12 you would have to get that from the bank themselves  
13 because DTC would not give them to you.

14 Q. What banks did you borrow money from where  
15 you pledged the securities to the banks?

16 A. It could be JP Morgan. It could be Bank of  
17 New York, you know, depending on what period; but if  
18 you were looking at 2008 or 2000s, it would be  
19 typically Bank of New York, M&T, it could be JP  
20 Morgan. I think that's -- those are the banks that  
21 we used at that time.

22 Q. And if it's earlier?

23 A. You'd have to look at any one of the -- you  
24 probably couldn't get them, you know, but it would  
25 be the banks that I mentioned to you.

1 Q. All the clearing accounts?

2 A. Right, right.

3 Q. So if I wanted -- let's say I'm talking  
4 about 2003.

5 A. Right.

6 Q. I would have -- in order to determine what  
7 securities were held by your firm, I would have to  
8 look at the DTC records for each of the banks that  
9 you listed before?

10 A. Right.

11 Q. Plus your own DTC --

12 A. Right.

13 Q. -- correct? And would that give me a  
14 complete picture of all the securities you owned as  
15 of a given point in time?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. Now, again, I don't want you to mention any  
20 individual names, but you testified previously that  
21 the four families entered into hold harmless  
22 agreements with you?

23 A. Right.

24 Q. Do you recall who was involved in drafting  
25 those hold harmless agreements?



1 A. One of the partners at Price Waterhouse.

2 Q. Do you remember who?

3 A. Ed Kostin, Edward Kostin.

4 MR. GOLDMAN: Could you spell the name?

5 THE WITNESS: K-o-s-t-i-n. He's deceased  
6 now.

7 Q. (By Ms. Chaitman) And, again, I don't want  
8 you to mention any names, but were the hold harmless  
9 agreements signed by members of all the four  
10 families?

11 A. Yes.

12 Q. And what was the total amount of the debt  
13 that the hold harmless agreements obligated the four  
14 families together to pay you?

15 A. Well, it varied depending upon the  
16 fluctuation of the -- of the securities because the  
17 hold harmless agreements basically stated that they  
18 were holding me harmless for any loss involved in  
19 the naked part of their securities because of the  
20 short positions that had been maintained. So it  
21 could have -- probably was a maximum of probably I  
22 would say at one point probably \$9 million --  
23 \$9 billion.

24 Q. Okay. As of December 11th, 2008 do you  
25 have any sense of how much it was?

1 A. As of when?

2 Q. December 11th, 2008.

3 A. I couldn't give you an exact figure. You  
4 know, the --

5 Q. Don't mention any names.

6 A. Not counting the 6 billion, there was one  
7 debit balance of 6.3 billion.

8 Q. Okay. So one person had a -- was that a  
9 margin loan?

10 A. Yes.

11 Q. So one customer had a margin loan of six  
12 billion?

13 A. Right, right.

14 Q. And then --

15 A. Then I would say the others were probably  
16 -- there was probably an additional \$5 billion in  
17 exposure that they caused me.

18 Q. Okay. So it was approximately \$11 billion  
19 at the time you confessed?

20 A. Approximately, yes.

21 Q. Okay. Now, Mr. Madoff, you've testified  
22 that the investment advisory fraud did not begin  
23 until either late 1993 or early 1994. Are you aware  
24 that David Kugel testified that the fraud began in  
25 the 1970s?

1 A. Yes.

2 Q. Mr. Kugel testified at the Bonventry trial  
3 that in the 1970s he gave Annette Bongiorno  
4 arbitrage trades for the accounts of Stanley, Chase  
5 and for Avellino and Bienes. Were you defrauding  
6 Chase and Avellino and Bienes in the 1970s?

7 A. No.

8 Q. Did you read Mr. Kugel's testimony?

9 A. Yes.

10 Q. Do you think it's accurate?

11 A. No.

12 Q. Can you explain why?

13 A. First of all, I think that --

14 THE VIDEOGRAPHER: Microphone, microphone,  
15 microphone.

16 MS. CHAITMAN: You took care of the  
17 microphone.

18 MR. GOLDMAN: Want me to remove the  
19 microphone? Sorry.

20 MS. CHAITMAN: I'm sorry, Mr. Madoff.

21 THE WITNESS: I guess the best way to  
22 describe -- from what I've been able to piece  
23 together from the -- what I've read from the  
24 testimony and what I've been told and what I've seen  
25 is that this so-called smoking gun I would refer to

1 it is that David Kugel, who is one of my convertible  
2 bond traders, used to -- at our -- at my request  
3 used to generate a convertible bond formula that he  
4 would give to either Annette Bongiorno or Jodi, all  
5 right, that would lay out what the proper conversion  
6 ratio was on a particular convertible security.

7 In other words, it was a formula that he  
8 would write on a scrap of paper that would say MCI  
9 convertible bond would be bought 100 bonds, you  
10 would short let's say a thousand shares of stock at  
11 a certain price. And they would take that formula  
12 and they would use that when they were going to now  
13 generate a trade for a client.

14 All right. Now, that was so that they --  
15 because they were not traders, they were not  
16 familiar with what the proper conversion ratios  
17 were. All right. So typically what would happen,  
18 the step used to be if Annette would come to them  
19 with a convertible bond and say okay, I have a  
20 million dollars worth of convertible bonds, that  
21 typically would be a million because we traded in  
22 much larger numbers.

23 So she would say there's \$10 million  
24 available to be invested in convertible securities.  
25 What securities would you recommend that would put

1 for the customers in? All right. So he would pick  
2 out a security that we were trading and he would  
3 give him the correct formula. Once they got that  
4 formula, that scrap of paper, the next step would be  
5 to go and search our trading records, which would be  
6 what the market maker or the firm's investment  
7 account bought and sold over a period of let's say  
8 for four days.

9 And then they would -- he would by running  
10 a run of what we bought and sold, then Annette or  
11 Jodi, not David, you know, Annette or Jodi would  
12 look through the trading records and pick out a  
13 certain number of shares in stock and they would  
14 come up with an average price and the appropriate  
15 number of shares.

16 All right. So this David Kugel had no  
17 access to any of those records. He wouldn't be able  
18 to do that. He was just giving them -- he was just  
19 giving them what the correct formula would be.

20 So by -- for some reason the Trustee, all  
21 right, because he had this piece of paper which they  
22 showed me when they first came down here years ago  
23 and asked me what it was, I told them it was a  
24 formula, exactly what I just said. They determined  
25 from that that David was generating the trade and

1 that we weren't actually buying. He was just making  
2 up the trade, which I laughed at at the time because  
3 it didn't make any sense, you know, for him to do  
4 that. He couldn't possibly generate the trade  
5 because he had no access to the records to pick that  
6 out. He was just looking at one trade.

7 That is why -- and that was why Dubinsky,  
8 you know, you know, did not have the -- couldn't  
9 match up the number of shares or the price properly.  
10 So David's testimony -- and I don't know why he  
11 would even say that. I don't think that he would --  
12 if he believed that he was actually generating a  
13 trade, I can't believe that he would even think that  
14 he was generating a trade because he knows that.

15 I mean, it just didn't make any sense. So  
16 either he was -- either the Trustee or whoever it  
17 was that was determining that, you know, just didn't  
18 understand it, which is probably the most likely  
19 situation or they were just trying to create a  
20 situation. Just doesn't make any sense.

21 And anybody that if you call anybody in  
22 for the industry, another person that ran a trading  
23 desk that was familiar with how you did these types  
24 of transactions would tell you the same thing. I  
25 mean, it made absolutely no sense.

1 Q. (By Ms. Chaitman) Now, when you confessed  
2 you weren't in the process of negotiating a plea  
3 agreement; right?

4 A. No, no.

5 Q. When David Kugel gave his testimony --

6 A. Uh-huh.

7 Q. -- he had negotiated a plea agreement;  
8 right?

9 A. From what I understand, yes.

10 Q. So he had to give the prosecutor something  
11 that the prosecutor wanted; right?

12 A. I don't know. It looks like it. I mean, I  
13 just -- you know, I don't think David Kugel was a --  
14 you know, a devious type of person. David Kugel was  
15 not a good communicator. I mean, he was known in  
16 the firm as having a very hard time telling anybody  
17 anything. Nobody ever wanted to speak to David  
18 Kugel. He was a very nice guy and he was actually a  
19 talented trader himself, but he could not  
20 communicate with anybody.

21 I mean, and so that's the only thing I can  
22 think of is he didn't understand the question, he  
23 got nervous. I just don't know, but it made  
24 absolutely -- it made absolutely no sense, his  
25 testimony.

1 And another example of this was there was  
2 a testimony by Irwin Lipkin, all right, about -- you  
3 know, first of all, you have to understand that the  
4 only one that ever saw a completed focus report in  
5 our firm or that ever signed a completed focus  
6 report was me. Nobody -- nobody in our firm knew  
7 what the actual P&L was. The traders -- and this is  
8 not by accident.

9 In other words, the securities industry  
10 has very strict requirements so that there's no  
11 conflict of interest between market makers, the  
12 trading department and so on. You're required to  
13 keep your records separate.

14 The trade -- the market makers are not  
15 allowed to see another market maker's, you know,  
16 trading positions or P&L. As a matter of fact, you  
17 have to have supervisors that are different. For  
18 example, my brother -- my one son was in charge of  
19 the market making department. The other son was in  
20 charge of the proprietary trading department. They  
21 had to be separate.

22 And you couldn't have a system -- the  
23 traders are not allowed to see what this other  
24 trader has a position of because of what they call  
25 Chinese walls between your market making, your



1 client business and your proprietary trading  
2 department. The -- now, when do our -- when a firm  
3 like ours that is a market maker and is doing an  
4 arbitrage business, whether it be split strike or  
5 whether it be convertible bonds and is trading  
6 baskets and options and all sorts of hedging  
7 strategy, which is what our firm specialized in,  
8 when you do -- when you prepare your financial  
9 reports, your focus reports at the end of any month,  
10 you are allowed to net all of your positions.

11 So, for example, if you have -- in our  
12 firm we could have ten traders trading the same  
13 security. So some traders would have long positions  
14 in IBM. Some would be short positions in IBM. Some  
15 would have option positions on in IBM. What you  
16 have to do at the end of every month is you net all  
17 the positions, the option positions, to come up with  
18 a net exposure or net position.

19 So you could have, for example, one trader  
20 may be long a thousand shares. Another trader is  
21 long -- is short 500 shares of stock so that the net  
22 would be 500 shares. All right. The person that  
23 instructs -- there's one person that instructs, you  
24 know, how you do all of this. Now, Irwin Lipkin  
25 even before he retired was very -- was not the most

1 efficient person. Irwin Lipkin started with me when  
2 he first came out of the Army, but as the firm grew,  
3 as the firm became more and more sophisticated and  
4 was trading in the old strategies, it was beyond  
5 Irwin Lipkin's grasp, which was fine because he was  
6 a bookkeeper.

7 He only had to know specific things. At  
8 the end of each month when you had to net all these  
9 different positions, Irwin Lipkin didn't do that.  
10 So what would happen is if Irwin Lipkin and the  
11 records that he was looking at showed a thousand  
12 shares of stock but didn't -- he wouldn't know what  
13 the rest of the firm's were. So somebody had to net  
14 all of this out.

15 And it was a very complicated procedure  
16 and each firm depending upon the type of business  
17 you had had certain what they called no action  
18 letters from the SEC, which told you how you could  
19 -- you know, how you could handle each security.

20 And as a matter of fact, because I was the  
21 chairman of the trading committee for the industry,  
22 I had to work with the SEC when we formulated all of  
23 these different regulations and rules. So I was  
24 aware of the fact that the typical accountant or  
25 lawyer, for example, would not be familiar with any

1 of that. So I was not the least bit surprised that,  
2 for example, Dubinsky's errors that he had because  
3 he, obviously, was not that familiar with how -- you  
4 know, how you did this. Now, it doesn't mean you  
5 couldn't find out.

6 If you went -- if you got someone that  
7 really was familiar with all of these things, they  
8 would be able to understand that; but if you ask the  
9 typical accountant because, look, I worked with  
10 every major accounting firm in the country, you  
11 know, over the years. So I was familiar with what  
12 they did, what they understood and what they -- it's  
13 not surprising. It's a typical problem in the  
14 industry.

15 So David Kugel's testimony as far as I'm  
16 concerned as with Annette and as with any of these  
17 people in my firm, whether it be Enriqua Pitz or  
18 anyone else because I read all of their depositions.  
19 And, you know, none of that was really valid because  
20 they were looking at only what their specific job  
21 was. They didn't know what the rest -- they weren't  
22 familiar with the whole picture of the firm.

23 The only ones that would know that would  
24 be Dan Bonventry in my firm, who was the director of  
25 all operations, or myself. It wouldn't have been

1 David Kugel. It wouldn't have been Enriquia Pitz and  
2 so on.

3 Q. Did you believe that the focus reports were  
4 accurate prior to 1994 when you stopped buying the  
5 split strike securities?

6 A. Yes. And you see, you're using the '94,  
7 '93, '92, so I want to make sure there. I said that  
8 the fraud began in '92 because that was when we  
9 weren't completing all of the transactions in this  
10 split strike. All right. There was some -- there  
11 were some transactions in the split strike done, you  
12 know, through 1993.

13 All right. But I'm not comfortable saying  
14 that everything was done -- was done -- I'm  
15 comfortable saying that everything was done  
16 correctly, you know, prior to '92.

17 Other than the fact there was some back  
18 trading of -- of customer transactions for the  
19 accounts, for the four large accounts that started  
20 like in 1990, that was -- because of what happened  
21 was after the crash in 1987, the four big clients,  
22 you know, forced me to liquidate some of their  
23 positions. And that's when the hold harmless  
24 agreements started.

25 Q. Okay. But --

1 A. Focus reports were accurate because that  
2 wouldn't have affected the focus reports anyhow.  
3 The focus reports were accurate through 1992 for  
4 sure.

5 Q. Through 1992?

6 A. Yes.

7 Q. Okay. So I know it's a long time ago and I  
8 don't want you to say anything unless it's your best  
9 recollection, but you testified earlier today that  
10 you were doing the split strike trades until late  
11 1993 or early 1994?

12 A. Right.

13 Q. But are you unsure of it? I mean, do  
14 you --

15 A. No. I was -- I didn't do it for all of the  
16 clients, you know. That's what I said. There were  
17 some clients that I did do the trades through 1993  
18 for.

19 Q. Is there any way that we could determine  
20 now which clients you did the trades for and which  
21 ones you didn't?

22 A. No. I couldn't remember that for sure.

23 (Customers Exhibit Number 29 was marked  
24 for identification.)

25 Q. (By Ms. Chaitman) Okay. I'm up to

1 Exhibit 29. I'm handing you what I've marked as  
2 Exhibit 29, which is an appendix to Mr. Dubinsky's  
3 report in which he lists the documents that he  
4 considered. Have you seen this document before?

5 A. No.

6 Q. Now, you've testified that Mr. Dubinsky did  
7 not interview you and no one on his behalf  
8 interviewed you; is that right?

9 A. Yes.

10 Q. Okay. And if you look at page eight of  
11 this document, it lists a number of people who have  
12 been -- whose deposition transcripts Mr. Dubinsky  
13 said that he read. Can you look through this list  
14 and tell me if any of these people -- it begins on  
15 the bottom of page eight --

16 A. Uh-huh.

17 Q. -- and then it goes on to page nine. Can  
18 you look at these names and tell me if any of these  
19 people would have known how you executed the  
20 convertible arbitrage trades in the 1980s?

21 A. You're looking at the depositions you're  
22 saying?

23 Q. Yeah. The names of the people. Do you  
24 recognize any of these people as people who had  
25 knowledge about convertible arbitrage trading from

1 the 1980s?

2 A. None.

3 (Customers Exhibit Number 30 was marked  
4 for identification.)

5 Q. (By Ms. Chaitman) Okay. Now, I'd like to  
6 mark as Exhibit 30 an August 20th, 2010 letter that  
7 was written by Scott Garrett to Stephen Harbeck and  
8 then a September 7th, 2010 letter from Mr. Harbeck  
9 to Scott Garrett, which is the response. I'll just  
10 have to find the one that I marked up. Just give me  
11 one second. I should have one more of these. Let  
12 me just see.

13 MS. FEIN: That's all right. We'll share.

14 MR. SHEEHAN: It's all right. Go ahead.

15 MR. GOLDMAN: This may be the marked up  
16 one.

17 MS. CHAITMAN: Oh, yeah. Thank you.

18 Q. (By Ms. Chaitman) Have you seen this  
19 document before?

20 A. No.

21 Q. If you'd be good enough to turn to page 18?  
22 And the numbers are on the top of the left-hand side  
23 of the page. The numbers are right up there.

24 A. Uh-huh.

25 Q. SIPC is telling Scott Garrett that you had

1 all together -- you had the 703 account, you had two  
2 custody accounts at JPMorgan Chase and you had an  
3 additional 127 accounts. Do you see that?

4 A. Right.

5 Q. Does that sound accurate to you?

6 A. A hundred and twenty-seven accounts why?

7 Q. Held by -- I'm reading from the top of the  
8 page. It says in addition to the Madoff 703 account  
9 and the two BLMIS custody accounts held at JPMorgan  
10 Chase as discussed in response to section two,  
11 question 1(a) above, an additional 127 accounts held  
12 by Madoff, BLMIS or other Madoff-related entities  
13 have been identified to date as a result of the  
14 investigation.

15 A. Well, I'm not sure which accounts he's  
16 referring to when he says 127 accounts. What is  
17 that? Customer accounts or what is it?

18 Q. Accounts in the name of your firm, either  
19 you or in the name of either you or BLMI.

20 MR. SHEEHAN: Helen, it might be a good  
21 idea if Mr. Madoff read question to question that's  
22 being answered here, the page before.

23 MS. CHAITMAN: Sure.

24 MR. SHEEHAN: It might be a little bit  
25 helpful.



1 MS. CHAITMAN: Sure.

2 THE WITNESS: I'm still confused as to  
3 what the question is. I don't know. Maybe it's  
4 just me right now, but I don't -- when he's talking  
5 about how many accounts, he's talking about -- what  
6 is he talking about? Customer accounts or accounts  
7 we had at other brokerage firms or what?

8 Q. (By Ms. Chaitman) Well, the question was,  
9 and I'm reading from the bottom of page 17, if for  
10 the same period, which is --

11 A. Right.

12 Q. -- December 1998 through December 2008,  
13 Madoff, BLMIS or other Madoff controlled businesses  
14 had other accounts at U.S. or foreign banks or other  
15 financial institutions provide annual balance data  
16 for these accounts?

17 A. Okay. Well, again, if he's talking about  
18 accounts that we had, you know, if he's talking  
19 about that we had -- for example, if the Union Bank  
20 in Switzerland handled an account for a hedge fund,  
21 they may have had ten hedge fund accounts because  
22 they have been the custodian for those accounts. As  
23 far as we're concerned, we never had an account with  
24 these entities. So again, it depends on how you  
25 define we have an account.

1           We trade for -- we had -- we were hooked  
2       into hundreds of other broker-dealers, whether it be  
3       Charles Schwab or Merrill Lynch or Fidelity. You  
4       know, we didn't have a -- we don't consider that we  
5       had an account there. We did business with them, so  
6       we had transactions that went through that. We were  
7       executing Charles Schwab's customers' accounts but,  
8       you know, Charles Schwab was our customer, not a  
9       customer of Charles Schwab.

10           Q.    Okay.

11           A.    So I don't know --

12           Q.    Is it fair to say that you don't believe  
13       that you, Madoff or BLMIS maintained 127 different  
14       accounts?

15           A.    No, no. Again, it depends on how you  
16       define an account. I mean, we had hundreds, you  
17       know, of accounts. We had much more than 127  
18       accounts depending upon what your definition of an  
19       account is. We did 10 percent of all the trading in  
20       the United States.

21                    So, you know, we had -- we transacted five  
22       or six hundred thousand transactions every day, you  
23       know; but as I say, if you were a customer of  
24       Fidelity or Charles Schwab, you had an account  
25       there. All right. You weren't my customer.

1 Fidelity or Schwab was my customer. Now, they did  
2 business with us, Fidelity. We don't consider that  
3 we had an account with them.

4 Q. Right.

5 A. Because when we executed transactions for  
6 them, those transactions went through the clearing  
7 corporation. They were settled every day. We  
8 didn't keep money at Fidelity. They didn't keep  
9 money at our account. Those all went through the  
10 clearing accounts.

11 Now, they would say that they -- they could  
12 say they have an account with us because they did  
13 business with us. So they would have a -- they  
14 would show that -- what business they did with  
15 Madoff on a particular day the same way that if you  
16 were a customer of ours, Sean Jones, it would say  
17 you have an account with us; but that's not what a  
18 firm --

19 Q. Right.

20 A. So I don't know exactly how they're  
21 defining an account.

22 Q. Okay. If you look at the back of the  
23 document and you go in one, two, three, four, five  
24 -- let's see. From the back of the document six  
25 pages, you see you get to this from the back of the

1 document. You've got it.

2 MR. SHEEHAN: Okay.

3 Q. (By Ms. Chaitman) You're in the wrong  
4 document.

5 A. Oh, I'm in the wrong --

6 Q. That will make it even harder.

7 A. No wonder why you people charge \$700 an  
8 hour.

9 Q. Okay. Sorry to confuse you.

10 A. Uh-huh, right.

11 Q. So these are -- this lists three Bank of  
12 New York accounts; right?

13 A. Right.

14 Q. One was for you and Ruth and then one was  
15 just for you and one was for BLMIS; right?

16 A. Right.

17 Q. And then there's a Bankers Trust account in  
18 your name?

19 A. Uh-huh.

20 Q. Was that used for the firm?

21 A. Yes.

22 Q. Okay. And there was a Barclays account?

23 A. Right.

24 Q. There were two -- actually, three Barclays  
25 accounts; right?

1 A. Uh-huh.

2 Q. One Bear Stearns account?

3 A. Right.

4 Q. One Fidelity account?

5 A. Uh-huh.

6 Q. One M&T account?

7 A. Right.

8 Q. And one Morgan Stanley account?

9 A. Right.

10 Q. Okay. Now, this is captioned Madoff  
11 related accounts, year-end balances and annual  
12 earnings accounts with transfers to and from the  
13 Madoff 703 account. Do you see that in the upper  
14 left-hand corner?

15 A. Uh-huh.

16 Q. So these were -- is it fair to say that  
17 these were all accounts which received transfers  
18 from the 703 account?

19 A. If that's what it says, yeah.

20 Q. Well, do you recall -- I mean, you've  
21 testified that Treasury securities were purchased  
22 with 703 account money by Fidelity, Bear Stearns,  
23 Morgan Stanley and Lehman; right?

24 A. Uh-huh.

25 Q. And Barclays is Lehman?

1 A. No. Barclays is Barclays.

2 Q. Well, if you look at the entry for  
3 Barclays, underneath it says Lehman?

4 MR. SHEEHAN: Could Lehman -- I'll stop.

5 THE WITNESS: Okay. I mean, Barclays we  
6 use -- Madoff Securities in London cleared their  
7 transactions through Barclays.

8 MS. CHAITMAN: Okay.

9 THE WITNESS: So but I don't know what  
10 Lehman did with Barclays. They may have used  
11 Barclays as well.

12 Q. (By Ms. Chaitman) Okay. When money was  
13 transferred from the 703 account to MSIL in  
14 London --

15 A. Uh-huh.

16 Q. -- was that money used to purchase  
17 securities?

18 A. It was used to purchase usually treasuries.

19 Q. From -- by MSIL?

20 A. Right.

21 Q. Okay. And were those treasuries also held  
22 for the benefit of the investment advisory  
23 customers?

24 A. Probably.

25 Q. Do you remember approximately how much MSI

1 held in Treasury securities?

2 A. No.

3 Q. And for us to determine that, we'd have to  
4 get the Barclays Bank statements, is that -- for the  
5 Treasury account?

6 A. Correct.

7 Q. If you look on the next page, which is page  
8 19 -- let me help you. Under paragraph two, what  
9 appears in bold is the question that was asked by --

10 A. Right.

11 Q. -- Congressman Garrett. It said during the  
12 period 1992-2008 when Madoff was actively pursuing  
13 his Ponzi fraud, he was engaged in market making and  
14 proprietary trading. For each of these years  
15 provide data on trading volumes and the annual gross  
16 and net revenues from this trading activity.

17 And then the answer is a table, which SIPC  
18 says the table below includes annual revenue, net  
19 income and trading volumes as reported in the focus  
20 reports filed by Madoff with regulatory authorities.  
21 Madoff focus reports were available back to 1983.

22 A. Uh-huh.

23 Q. Was this information on the focus reports  
24 accurate after 1992?

25 A. I assume so. The revenue, yeah.

1 Q. So, for example, where it says average  
2 monthly reported trade ticket executions, do those  
3 numbers look accurate to you?

4 A. It would be under focus reports, yes.

5 Q. Okay. And would the focus reports  
6 accurately reflect the monthly trade ticket  
7 executions?

8 A. Uh-huh.

9 Q. And what -- if you can answer this, what  
10 was the average volume of each trade ticket? I  
11 mean, I assume you wouldn't do a trade for three  
12 shares of IBM?

13 A. No. These would be -- this is not -- I'm  
14 assuming these are not customer transactions. These  
15 are -- on the focus reports these were just  
16 reflecting the market making proprietary trading  
17 business.

18 Q. What you were doing for your own account?

19 A. Right.

20 Q. Right.

21 A. Yeah. So --

22 Q. Do these numbers look accurate to you?

23 A. I would -- I would assume so. If we run  
24 the focus reports, the focus reports were accurate  
25 all the time.



1 Q. So what would -- if there's a -- if you can  
2 quantify this. If you can't, just say you can't,  
3 but what would be the average number of shares that  
4 you would do on one ticket?

5 A. On a ticket?

6 Q. Yeah.

7 A. It varies. I just -- no way to be able to  
8 tell you that. I know how many trades they were  
9 doing. They were doing, you know, anywhere from a  
10 low of 250,000 transactions a day to 600,000  
11 transactions a day. I mean, you know, how the  
12 shares were, you know, I don't -- you know, I don't  
13 know. I didn't pay attention to that.

14 Q. Okay.

15 A. Why is it relevant?

16 Q. I'm just trying to get a sense of the  
17 volume. In other words, let's say if we take in  
18 1983 you did a reported -- average monthly reported  
19 trade tick at executions was 8,135.

20 A. Well, let me put it to you this way. The  
21 industry kept records, transactions of how many  
22 transactions we did because they were reported, you  
23 know, to -- you know, to the NASD. I mean, it was  
24 reported all over the industry basically. These  
25 were not numbers that we generated. That went

1 through the systems, the clearance and settlement  
2 systems and the reporting, trade reporting systems  
3 that we did anywhere from typically of a low of five  
4 to ten percent of the actual number of transactions  
5 were executed in the United States. That's not  
6 something that I made up.

7 That was something that's been reported  
8 all over the -- all over the industry. It's been  
9 reported by the NASD and the SEC. I mean, by  
10 anybody's scope it was a huge amount of business.

11 As a matter of fact, when we -- when we  
12 developed this Primex trading system and my partners  
13 were Goldman Sachs, Merrill Lynch, Lehman Brothers  
14 and Citicorp, the five -- all five firms that were  
15 the partners in Primex handled 50 percent of all the  
16 trading in the United States. Again, this is not  
17 numbers that we generated. This is what the  
18 industry reported.

19 Q. Okay. But if I had been your customer,  
20 would you have taken an order from me to buy five  
21 shares of IBM?

22 A. No.

23 Q. So what was the low --

24 A. We didn't -- if a customer called us up to  
25 buy stock for them, we never took an order. In

1 other words, you couldn't as a customer, our firm  
2 policy was to not handle a typical retail order for  
3 a client. We either -- you either had to be a  
4 broker-dealer or a bank to be a client of Madoff or  
5 if you were a customer, you had to have -- when you  
6 opened an account, you had to have a minimum of  
7 500,000, which is at the very earliest \$500,000 in  
8 the account. Typically it was then 2 million. That  
9 was if you were an individual client.

10 So but if you called us up and you said  
11 you want to buy 20 shares of IBM or you want to buy  
12 a thousand shares of IBM, we would not do that  
13 order. If it wasn't -- the only customer business  
14 that we did was where we managed the entire account  
15 and we made the decisions.

16 Q. Okay. Now, if you'd look on page 23 at the  
17 bottom of the page, the question was how many  
18 accounts under consideration for avoidance action  
19 were established with Madoff prior to the inception  
20 of the Ponzi scheme?

21 In making the net investment method  
22 determination net equity from these accounts, has  
23 the Trustee used any of the pre-Ponzi disbursements?  
24 If so, provide details, et cetera. And the response  
25 says based on the Trustee's investigation and upon

1 review of the earliest records available to him, the  
2 Trustee has found no evidence indicating that the  
3 BLMIS investment advisory business has been operated  
4 as anything but a Ponzi scheme.

5 A. Right.

6 Q. Now, did anyone on behalf of the Trustee  
7 ever talk to you about the trades that you did in  
8 the 1980s?

9 A. No.

10 Q. Did the Trustee ever disclose to you that  
11 he, in fact, had some trading records from the  
12 1980s?

13 A. No.

14 Q. Now, when SIPC is using here the phrase  
15 Ponzi scheme, if you accept for a moment that a  
16 Ponzi scheme is a nonexistent business in which  
17 people invest where the sole source of paying  
18 returns on their investments is investments from new  
19 investors --

20 A. Uh-huh.

21 Q. -- on that definition was the split strike  
22 ever a Ponzi scheme? In other words, did you ever  
23 need new cash from new customers in order to redeem  
24 other customers?

25 A. No.

1 Q. Did you ever need new cash from new  
2 customers to pay the earnings that were reported on  
3 the statements?

4 A. No. Let me make a statement that I have  
5 never to my recollection ever had a conversation  
6 with a Trustee, ever. The Trustee never met with  
7 me, never spoke to me, never asked me anything from  
8 the date of my arrest until currently. I've had  
9 meetings with the attorneys when the attorneys came  
10 down here after, you know, I don't know whether that  
11 was 2010 or some year in that, but there was  
12 nothing; but the Trustee, the only time I ever saw  
13 the Trustee was at my proffer meeting with the SEC.

14 Q. In December 2008?

15 A. December of 2008. And as far as I recall,  
16 he never asked me anything and I never said anything  
17 to him.

18 Q. Okay. But did anyone from the Trustee's  
19 law firm --

20 A. No. The law firm, yes. They came down at  
21 one period of time. David Sheehan could -- was  
22 present.

23 Q. Okay. But did they ever ask you whether  
24 you actually executed the trades that were done in  
25 the convertible arbitrage strategy?

1           A. I don't think they ever asked me that. The  
2           only conversation I had with them about trade at all  
3           was the David Kugel scrap of paper that I mentioned  
4           before.

5           Q. Okay, okay. Did they ever ask you exactly  
6           when the -- when you stopped buying the securities  
7           for the split strike?

8           A. No.

9           Q. Did they ever ask you whether you needed  
10          the money from new investors in order to pay old  
11          investors?

12          A. No.

13                    (Customer Exhibit Number 31 was marked  
14          for identification.)

15           MS. CHAITMAN: I'm up to Exhibit 31, and  
16          this is the expert report of Bill Feingold. That's  
17          okay.

18           MR. GOLDMAN: I'll take it easy.

19           Q. (By Ms. Chaitman) Okay. Have you seen  
20          this document before?

21          A. Yes.

22          Q. Okay. Do you know Bill Feingold?

23          A. No.

24          Q. Did you ever hear about him?

25          A. No.

1 Q. I'd like to go through the substantive  
2 portion of this report and I'd like you to give me  
3 your insights on it; okay?

4 A. Uh-huh.

5 Q. So if you'd be good enough to turn to page  
6 two?

7 A. Uh-huh.

8 Q. And if you could just read paragraph 12 and  
9 then if you have any comments on that, I'd like you  
10 to tell me what they are.

11 A. Yes.

12 Q. Okay. Can you tell me what they are?

13 A. What? What did you ask me?

14 Q. Did you have any comments on this? Do  
15 you -- do you --

16 A. Yeah. I think, you know, he pointed out,  
17 you know, the fallacy of what Dubinsky used, made  
18 statements about volume and so on. He's  
19 criticizing -- I think there were 41 points that he  
20 made that Dubinsky was incorrect in his analysis,  
21 which was basically very similar to all my comments  
22 when I analyzed the Dubinsky report.

23 Q. Okay. In paragraph 13 he says that most  
24 trading and bonds, unlike stocks, takes place in the  
25 over-the-counter market and that's something you had

1 testified to; right?

2 A. Right.

3 Q. And then he quotes the SIFMA website for  
4 the statement, quote, the OTC market is much larger  
5 than the exchange markets and the vast majority of  
6 bond transactions, even those involving exchange  
7 listed issues, take place in this market?

8 A. Correct. I think this is -- he's  
9 reflecting very similar to the last time we had a  
10 deposition and I produced a very large book that was  
11 written. I gave -- you took as evidence --

12 Q. Yes.

13 A. -- that stated all of this.

14 Q. Right.

15 A. That was in complete contrast to Dubinsky's  
16 report.

17 Q. Right. And if Dubinsky had spoken to  
18 anyone who did trading and convertible bonds in the  
19 1980s, would they have found this information out?

20 A. Yes.

21 Q. In paragraph 14 Feingold says in an OTC  
22 market investors do not trade directly with each  
23 other but with many individual dealers who  
24 continuously make markets, paren, buy and sell. As  
25 such, OTC markets are much less centralized and data



1 are less readily available. Is that accurate?

2 A. That's correct.

3 Q. If you'd just take a look at paragraph 15  
4 and if you'd just take a moment to read that and  
5 then I'd like your comments on it.

6 A. Right. He's basically saying that, you  
7 know, that -- that convertible bonds and bonds in  
8 general do not trade for the most part on the floor  
9 of an exchange. They trade over the counter between  
10 dealers. Madoff is one of the largest convertible  
11 bond dealers in the country. We made more markets  
12 in convertible bonds than any other firm. He  
13 doesn't state that, but that was common knowledge.

14 And he's saying that you couldn't get  
15 accurate information, you know, until 2002 because  
16 that was when TRACE came in. And even when TRACE  
17 came in, there was question as to whether or not the  
18 correct volume was reported even then. Bond dealers  
19 in general do not like to report their transactions  
20 or their volume because they consider it proprietary  
21 information.

22 The SEC would like -- look, the SEC would  
23 like everything to be transparent. That's been a --  
24 in the 50 years I've been in this industry, that has  
25 been a debate that went on and still has not been

1 resolved. And to a certain extent, you know, they  
2 blame me for a lot of -- a lot of this because of  
3 the fact that we were the ones that pioneered the  
4 form of electronic trading.

5 Right now all of these problems that you  
6 have with this what they call that book that came  
7 out, Flash Boys, all the trading is done in dark  
8 pools and not -- when I came into this industry,  
9 98 percent of the business in securities was traded  
10 on the floor of an exchange and listed securities.

11 The SEC was unhappy with that and I was  
12 given the responsibility for developing a more  
13 competitive marketplace. And that's how we started  
14 this electronic trading and that's how I developed  
15 NASDAQ originally. The volume on the -- on New York  
16 Stock Exchange's list of securities today is only  
17 about 30 percent on the floor of the exchange and  
18 70 percent if it is done over the counter.

19 So and that's a constant problem. The  
20 whole marketplace has changed and will probably  
21 never go back to the way it was. And nobody wants  
22 to -- the goal of the industry is to have less  
23 transparency because people always -- always want to  
24 trade against somebody else. They're all competing  
25 with each other.

1           So the idea is to conceal what you're  
2           doing, what you're buying, what you're selling. And  
3           because of what the SEC would like to do, they'll  
4           never change that. Business is done more in Europe  
5           now than ever before and it's -- that's where the  
6           industry is.

7           Q. In paragraph 19 Mr. Feingold says, thus,  
8           when Mr. Dubinsky cites data from the New York Stock  
9           Exchange to support his arguments about bond volume,  
10          he is treating approximately one percent of the  
11          activity as indicative of the entire market.

12          A. Really?

13          Q. Is that --

14          A. Yes.

15          Q. In fact, I think that the book that you  
16          brought to the last deposition --

17          A. Right, right.

18          Q. -- said that one percent of the convertible  
19          bond trading was done on the New York Stock  
20          Exchange?

21          A. Right.

22          Q. And if Mr. Dubinsky or someone working for  
23          him had spoken to anyone who did convertible bond  
24          trading in the 1980s, would they have learned that?

25          A. Look, without trying to be cruel, the

1 Dubinsky report is an embarrassment. I mean, I just  
2 -- that's the only way to describe it. Quite  
3 frankly, I don't understand it because if you look  
4 at his background, you know, as an accountant and  
5 his so-called fraud order, I don't understand how --  
6 to me it's a mystery and would be for anybody a  
7 mystery that would read that report would be  
8 stunned, you know, at his -- at the report.

9 I don't understand it. I mean, Feingold's  
10 background is certainly equal, if not better, than  
11 Dubinsky's and it's certainly more current. So but,  
12 quite frankly, you could find anybody that was  
13 familiar with the marketplaces that would be able to  
14 write the same kind of report that Feingold wrote  
15 that was critical of Dubinsky's report.

16 He does state in the report if you read  
17 through the Dubinsky report, he does make comments  
18 that he doesn't have -- he doesn't have access to  
19 certain information. He can't find it, but that  
20 didn't prevent him from still coming -- drawing  
21 conclusions.

22 So if you're going to -- if you're going  
23 to say, well, I only looked at the New York Stock  
24 Exchange volume, you know, and, therefore, I'm  
25 determined that Madoff could not have bought

1 securities because he -- you know, it didn't match  
2 the volume of the New York Stock Exchange when  
3 everybody knows that you don't -- you can't just  
4 look at the New York Stock Exchange volume.

5 I mean, how could you write a report that  
6 said that? What he should have said is I do not  
7 have access to the information to make a  
8 determination of whether these transactions took  
9 place or not. That's what -- that's what -- you  
10 know, that's what I would have done or anybody would  
11 have done.

12 Q. In paragraph 27 Mr. Feingold writes in  
13 paragraph 99 Mr. Dubinsky inaccurately describes the  
14 process by which convertible securities become  
15 common shares. He writes that, quote, many  
16 convertible securities have the option for the  
17 company to call the security at a predetermined date  
18 or at the company's discretion, that is, the company  
19 has the right to convert the convertible securities  
20 into common shares.

21 In instances where the bond or preferred  
22 equity is called, the shares are converted on the  
23 record date at a determined amount, end quote. In  
24 fact, except for a specific subcategory known as  
25 quote, mandatory, end quote, convertible securities,

1 the securities are convertible at the investor's  
2 discretion, not the issuing company's. When a  
3 company calls a security, the investor is then given  
4 a period typically between 20 and 120 days in which  
5 to decide whether to convert the security into  
6 common shares or to accept the cash call price  
7 stipulated in the company's call notice. Do you  
8 agree with Mr. Feingold on that?

9 A. Yes.

10 Q. Now, in paragraph 30 Mr. Feingold writes  
11 footnote one of two of Mr. Dubinsky's report  
12 contends that a significant percentage of the short  
13 positions reported by Madoff customers exceed the  
14 amount of short interest in those stocks as reported  
15 at month end by the stock exchange. I found this  
16 very dubious.

17 Going through the list I noticed that  
18 Pfizer, one of the world's largest drug companies,  
19 had short interests according to Mr. Dubinsky's  
20 table of 826,162 shares at the end of March 1992.  
21 Pfizer's closing price that month was \$69.50 per  
22 share according to Yahoo Finance.

23 Average daily trading volume in Pfizer was  
24 10.74 million shares. If Mr. Dubinsky's data are  
25 correct, the short interest in Pfizer then

1 constituted less than eight percent of an average  
2 day's volume.

3 A. I don't know what you -- I don't know what  
4 you're asking me. I mean, as I say, I'm at a loss  
5 to explain this whole Dubinsky report. I know, it's  
6 -- if it wasn't such a -- if his accusations weren't  
7 so serious, it would almost be comical.

8 Q. Well, is it difficult to find out what the  
9 average daily volume in Pfizer was?

10 A. Yes, I mean, because volumes were reported.  
11 The over the -- he's looking at volume that was  
12 reported on the exchange when over-the-counter  
13 dealers don't report the volume. I mean, you know,  
14 so you can't -- it's like adding apples and oranges.  
15 You can't -- you can't -- you can't find the  
16 information.

17 Again, as I said before, the business of  
18 an exchange is to try and let people know exactly  
19 what has happened. That's what they advertise. You  
20 know, an exchange wants to make everything public  
21 because in theory, you know, the SEC would love, you  
22 know, the public to understand everything that goes  
23 on, how many shares trade, where they trade, at what  
24 price they trade. Institutions who do the majority  
25 of the business want to do just the opposite.

1           They do not want to let, you know,  
2   everybody know what they're doing because it's no  
3   different than like insider trading. You know, the  
4   idea is you're in an industry where everybody is  
5   competing against each other, including -- including  
6   the public customers. You have to understand that  
7   the person who buys stock thinks he knows something  
8   that the person who's selling it doesn't understand.

9           It's not a zero sum gain. Someone is  
10   going to be a winner, someone is going to be a  
11   loser. And it's the same. So information is the  
12   key. People are trying to get less information out  
13   as possible, you know, but that's the way the  
14   industry is done now. The markets are not --  
15   they're much less transparent today than they were  
16   20 years ago, you know.

17           So you can't -- it's not an accident that  
18   people can't -- that Dubinsky can't find this  
19   information that he's trying to do because it's not  
20   available. I mean, quite frankly, I think that what  
21   happened was in fairness -- fairness to me, not the  
22   Trustee -- the Trustee drew conclusions from day one  
23   of what he thought he wanted to -- he wanted the  
24   outcome to be. He wanted the outcome to be that I  
25   was a fraud from the very beginning, that I never



1 did any transactions. He made statements like  
2 because he couldn't find confirmations, therefore,  
3 from other broker-dealers. Therefore, the  
4 transaction never took place.

5 All right. Him not understanding that the  
6 industry stopped producing confirmations to  
7 noncustomers. So when I bought stock from -- you  
8 know, in the open market from Merrill Lynch, we  
9 didn't send confirmations to each other. The  
10 industry discontinued that.

11 Picard drew a conclusion because he  
12 couldn't produce a confirmation. Therefore, the  
13 trade never took place. He totally ignored the fact  
14 that, number one, confirmations weren't even  
15 generated any longer, which is something that is  
16 very obvious to anybody in the industry. Also, he  
17 totally eliminated the fact that nobody keeps  
18 records past six years any longer.

19 They're destroyed, you know. So he -- you  
20 know, but he had a conclusion that he drew from day  
21 one very similar to what the U.S. Attorney did when  
22 he asked me do I ever short stocks and I said yes,  
23 of course, I short stocks. You know, he said did  
24 you ever sell to a customer that didn't know? Of  
25 course, I did.

1           You know, and I had to explain to the U.S.  
2   Attorney that that's what the business of market  
3   makers are doing, you know; but so he wanted to  
4   determine, well, since I always shorted stock back  
5   in 1962, that I might have never bought stock. I  
6   mean, you know, I don't -- I think that what  
7   happened was Dubinsky was -- you know, the Trustee  
8   must have told Dubinsky this is what my conclusion  
9   was. This is what my theory is.

10           And Dubinsky, whether he did it in a  
11   devious way or not, I don't think so. I just think  
12   that he just did the best he could. He wanted to  
13   get information, so he took whatever information was  
14   available. The fact that the information didn't  
15   exist didn't mean that, you know -- that, you know,  
16   the conclusion they drew, it didn't make any sense.  
17   I don't know what else to say.

18           Q. Okay. Now, Mr. Dubinsky opined that you  
19   were insolvent as far back as 1983.

20           A. I saw that.

21           Q. Do you agree with him?

22           A. No. I can tell you he stated how he came  
23   to that conclusion, you know. He just took whatever  
24   the -- you know, whatever -- he made the conclusion  
25   that I never did any transactions in '83. So,

1       therefore, he said since the customer showed that,  
2       you know, balances in the account from transactions,  
3       he figured, okay, that was a liability that Madoff  
4       had. He totally eliminated the fact that I was  
5       doing business, you know, back in 1983 and so on.  
6       So, therefore, I had the assets to cover that.

7               So he said, well, he knew what the  
8       liabilities were because it was a customer  
9       statement. He had no way of knowing what the assets  
10      that I had were because he didn't have any records  
11      going back then. I mean, who would possibly make a  
12      statement like that? I mean, the biggest mistake I  
13      made was not going to trial.

14             Had I gone to trial rather than just  
15      saying okay, I'm going to eliminate the government  
16      spending millions of dollars and years in a trial  
17      with me, I'm just going to admit that I was guilty  
18      because I was from 1992 on, which was bad enough.  
19      You know, they for some reason, the Trustee wanted  
20      to determine that I was guilty from 1963.

21             All right. Had I gone to trial, I would  
22      have called in any number of expert witnesses like  
23      this Feingold or anything else and the judge would  
24      have totally laughed the Trustee out of court. Why  
25      he even bothered writing -- 90 percent of his report

1 deals with after 1992. I already admitted that I  
2 didn't do the transactions after '92. So why spend  
3 all that time on that, you know? What he did prior  
4 to that made absolutely no sense anyhow.

5 Q. Now, did Dubinsky acknowledge that you held  
6 securities at Lehman, Bear Stearns, Morgan  
7 Stanley --

8 A. No.

9 Q. -- Fidelity and JPMC?

10 A. No, no. That's not true. He did state  
11 that I had an account at Morgan Stanley, yeah. He  
12 stated that. He didn't give any details on it but,  
13 I mean, it was he had a copy of the Morgan Stanley  
14 report in his information here. So, therefore, he  
15 had to know that I had securities over there. He  
16 did state that I had securities at those -- at other  
17 firms, yeah. He did state that.

18 Q. But did he acknowledge that you had  
19 purchased those securities --

20 A. No.

21 Q. -- with 703 account money?

22 A. No.

23 Q. Now, Mr. Dubinsky also opined that your  
24 firm was insolvent from 2002 on. Do you agree that  
25 you were insolvent as of 2002?

1           A. In 2002 I did not have -- if he's -- I  
2 would say yes, I was insolvent because I did not  
3 have enough assets to cover the liabilities that I  
4 had with the customers in 2002.

5           Q. If you had -- if everyone had demanded  
6 payment at one time?

7           A. Yes. You have to assume that if I show the  
8 customers had a liability on that, whether they  
9 asked me for it or not, I was insolvent. You have  
10 to make the assumption that if you owe the money  
11 out, whether you have the ability -- if you don't  
12 have the ability to pay if called, you're insolvent.

13          Q. Okay. Now, as of 2002 if the four families  
14 had paid you the money they owed you, would you  
15 still have been insolvent?

16          A. In 2002? Yes, because the fund business  
17 was -- I wouldn't have been able to cover all my  
18 direct accounts, you know, other than the funds  
19 because the customers only had a liability of \$5  
20 billion whereas the funds had \$14 billion.

21                So, you know, I wouldn't have enough money  
22 to cover, you know, \$19 billion; but I certainly  
23 wouldn't have had enough money to cover all my  
24 individual clients but, quite frankly, it doesn't  
25 make a difference. They're both the same.

1 Q. Looking at paragraph 39 of Mr. Feingold's  
2 report, he says an active trader would likely have  
3 held many convertible arbitrage positions for  
4 substantially less than the period until the next,  
5 paren, usually, end paren, semi-annual coupon was  
6 paid. Most likely, bonds were either converted or  
7 sold into the open market.

8 Again, an investor who sells a corporate  
9 bond receives accrued interest from the buyer  
10 instead of collecting on the coupon date from the  
11 issuer and the interest is built into the total cash  
12 inflow.

13 A. Right.

14 Q. Do you agree with that?

15 A. Yes.

16 Q. Is that the -- is that the strategy that  
17 you used?

18 A. Yeah. It's what anybody would use at  
19 TRACE. It's not unique to Madoff. It's, you  
20 know -- it's, you know, standard operating  
21 procedure.

22 MS. CHAITMAN: Okay. All right. We have  
23 to take a break because they have to change the  
24 disc.

25 THE VIDEOGRAPHER: Going off the record.

1 The time is 12:46 p.m.

2 (A recess was taken.)

3 THE VIDEOGRAPHER: Back on the record.

4 This begins disc number three. The time is  
5 1:00 o'clock p.m.

6 Q. (By Ms. Chaitman) Mr. Madoff, I just have  
7 one other area that I want to cover with you and  
8 that is Mr. Dubinsky's conclusion that the  
9 proprietary trading aspect of your business never  
10 made money.

11 A. Yeah. I'm sort of at a loss for that  
12 because when I read that in his report, his own  
13 information was, and I don't -- do you have his  
14 report?

15 Q. I do.

16 A. And as I say, I'm overly sensitive to  
17 anybody criticizing the side of the firm that my  
18 sons ran, which was the proprietary and market  
19 making side. So where is the section --

20 MS. CHAITMAN: I think it's at the very  
21 end.

22 MR. SHEEHAN: I think there is an index.

23 THE WITNESS: Don't try to be -- don't try  
24 to be accurate. I'm not used to that.

25 MR. SHEEHAN: All right.

1 THE WITNESS: Oh, here it is.

2 MR. GOLDMAN: Bernie, tell us what page  
3 you're on. I'm sorry.

4 MS. CHAITMAN: Just tell us, yeah.

5 THE WITNESS: Page 116. He correctly  
6 states that the firm from 2000 to 2008 showed  
7 revenue of a billion three hundred thousand dollars  
8 in proprietary trading, but of that -- during that  
9 period it was 714, \$715 million worth of income that  
10 came in from the 703, from the customer account.

11 So if you eliminate that, the proprietary  
12 trading only had legitimate profits of \$573 million,  
13 you know, after you eliminated the money that came  
14 from the customer accounts into the proprietary  
15 trading. So it still showed the firm made 572  
16 million, \$573 million of profit.

17 Stating that, how does he determine that  
18 proprietary trading was not profitable? I don't  
19 understand it. It's like saying one and one equals  
20 three.

21 Q. (By Ms. Chaitman) Do you agree that 716 --  
22 \$714 million was transferred from the 703 account to  
23 the proprietary trading?

24 A. I agree with that. That really, you know,  
25 if you want to eliminate all the customer money that



1 was -- that was funneled into the firm, you know,  
2 was from customers, was not from proprietary  
3 trading, I would say that would be correct; but that  
4 in itself is not really correct because what he has  
5 no way of knowing is he -- is that the big four  
6 accounts that owed me all this money, for example,  
7 with one account that had a six point some odd  
8 billion dollar out, you know, debit balance, when  
9 those accounts put me in a short -- what's called a  
10 naked short position, which is what created my  
11 problem why I had to start the fraud in '92, all  
12 right, those short positions were mark to market,  
13 got mark to market at the clearing house every day,  
14 which typically happened.

15 So I was called for money to cover those,  
16 that deficit all the time. That was money that I  
17 was taking, so I did that by -- you know, part of it  
18 by transferring the money from the customer 703  
19 account to be able to meet those margin calls, which  
20 was -- which I would have done normally had I been  
21 showing all the figures correctly.

22 So, you know, realistically, what I did  
23 was I penalized my proprietary traders' income, you  
24 know, but my proprietary traders as far as they're  
25 concerned, they made a million -- a billion two.

1                   And when I paid -- when I paid my -- the  
2                   percentage of their -- when I paid their bonuses  
3                   based upon their profits, I paid it on a billion  
4                   three because proprietary traders, I had no reason  
5                   to penalize my proprietary traders because of the  
6                   problem that I put myself in with those big four  
7                   clients. You understand what I'm saying?

8                   Q. I just want to clarify something. Staying  
9                   on that page, the 714 --

10                  A. Million dollars.

11                  Q. -- million that Dubinsky found went from  
12                  the 703 account, now, the proprietary trading didn't  
13                  have their own bank account; right?

14                  A. No.

15                  Q. It went into the BNY account?

16                  A. Right.

17                  Q. Okay. So you agree that 714 million from  
18                  the 703 account went into the BNY account?

19                  A. Right.

20                  Q. And as I understand your testimony, what  
21                  you're saying is that some portion of that money was  
22                  used by you to meet the margin calls --

23                  A. Right.

24                  Q. -- on the portfolio that you assumed from  
25                  the four families?

1 A. Correct.

2 Q. That was subject to the hold harmless?

3 A. Right. Which normally I would have done  
4 had I shown that that was going on, but I didn't.  
5 So Dubinsky is not -- Dubinsky is correct. That  
6 money did come from the 703 account, but what he  
7 doesn't have anything to do with, which he doesn't  
8 know about, was the whole problem that I had  
9 occurred -- you know, that created that problem.

10 Q. But if the money went from the 703 account  
11 to the BNY account, then wasn't it commingled with  
12 all the money in the BNY account?

13 A. Yeah.

14 Q. So what is the basis of saying that any of  
15 it went to proprietary trading?

16 A. Because the problem, the margin calls that  
17 I got was because of customer account. In other  
18 words --

19 Q. But was that charged to the proprietary  
20 trading business?

21 A. No. It was. It wasn't on the focus report  
22 because it shouldn't have been. In other words, had  
23 I shown all of this stuff properly, that's what the  
24 SEC would have said yeah, of course, you can take  
25 them. That money in the 703 account is actually

1 part of that money is due me, was due Madoff. Not  
2 all of it, but part of it was. In other words, the  
3 monies that the four clients owed me, you know, from  
4 the hold harmless agreements, that money, part of  
5 that, the 703 account was their monies.

6 So I was not wrong. Under normal  
7 circumstances I would have taken that money. The  
8 reason why I paid my traders, my proprietary traders  
9 on the billion three, because that's what they made.  
10 The proprietary traders made a billion three. They  
11 didn't only make 573 million. They made a billion  
12 three.

13 And if my -- if I didn't pay my traders  
14 properly, they would have said -- they get  
15 25 percent of their trade. They would have said to  
16 me, listen, because you made this ridiculous  
17 agreement with your four big clients and they cost  
18 you all that money, don't penalize us. That's your  
19 problem, which would have been true.

20 MS. CHAITMAN: Okay. I have no further  
21 questions. Thank you, Mr. Madoff.

22 MR. SHEEHAN: You're done?

23 MS. CHAITMAN: Yeah. I'm done. You want  
24 to change seats or --

25 MR. SHEEHAN: No. I'm fine. I do need to

1 get an outline out, but it will take just a second.

2 EXAMINATION

3 BY MR. SHEEHAN:

4 Q. Mr. Madoff, before we get started, I just  
5 want to ask you a question that wasn't quite asked  
6 the way I wanted it to be. That is, are you on any  
7 medications that would impair your ability to  
8 testify here today?

9 A. No, no.

10 Q. Okay. That's not particularized towards  
11 you. It's asked at every deposition.

12 A. Yeah. No. I understand.

13 Q. Because people do take medications that  
14 sometimes doesn't render --

15 A. No. I'm on lots of medication, but nothing  
16 that would impair my --

17 Q. Okay. All right. Just so you and I agree  
18 on that. Okay. Let me sort of go back over some of  
19 the testimony --

20 A. Right.

21 Q. -- this afternoon before we get into some  
22 other stuff I want to talk about. On November 30,  
23 2008 your customer statements showed you to be owed  
24 your customers \$64.6 billion, thereabouts; right?

25 A. Right.

1 Q. And when the Trustee looked at all of your  
2 bank accounts and stock they had available at that  
3 point, you had a little over 300 million left?

4 A. Right.

5 Q. So in the course of -- you're kind of  
6 short, yeah, like 64.3 billion dollars; right?

7 A. Right.

8 Q. Are you saying that that disappeared over  
9 -- that you actually could have covered everybody  
10 prior to 2002?

11 A. No, no.

12 Q. Okay. So what you did do, though, is that  
13 in 2008 according to our calculations you actually  
14 paid redemptions of close to \$12 billion?

15 A. Uh-huh.

16 Q. About 11.7, I think, is what it was?

17 A. Right.

18 Q. Does that sound accurate to you?

19 A. I guess so, yeah.

20 Q. So there was a lot of money going out  
21 during 2008; right?

22 A. Right.

23 Q. But it wasn't anywhere near \$64 billion --

24 A. No.

25 Q. -- that you said you were long?

1 A. No.

2 Q. And is it your testimony that that \$64  
3 billion shortfall occurred from 1992 through 2008?

4 A. Yeah.

5 Q. All right. Do you know what at the end of  
6 1992 you showed on your books and records assuming  
7 all trading is as you say it was, what was on your  
8 books and records then as what you were -- you  
9 yourself were long?

10 A. Well, first of all, you have to understand  
11 that the -- there was -- the losses that I incurred  
12 from the short positions of the big four accounts,  
13 all right, that occurred from the 1987 through 1992  
14 when the market had recovered from the crash in  
15 1987. That was -- that was substantial. That could  
16 have been, you know, as I said, I don't know how  
17 many billions of dollars it was at the time; but you  
18 have to take that into consideration, you know.

19 Q. Right.

20 A. So, you know, the \$64 billion, don't  
21 forget, is -- the reason that number got so large  
22 was that I was generating falsely like 12 percent  
23 return on all the -- on the principal money that was  
24 invested. Let's say the total of almost  
25 \$19 billion, you know, at 12 percent return from

1 nineteen ninety -- from 1992 through 2008. That's  
2 where the \$64 billion came in.

3 Q. Okay.

4 A. It was the profits that were being  
5 generated, the false profits that were being  
6 generated.

7 Q. I understand that, but let's go back to the  
8 beginning.

9 A. Uh-huh.

10 Q. I think sometimes chronologically it helps  
11 when we talk about this stuff.

12 A. Right.

13 Q. So you started the business in 1960; right?

14 A. '60, right.

15 Q. That's when you first registered. And did  
16 you start out as a market maker --

17 A. Yes.

18 Q. -- or as a retail business?

19 A. Well, I started, I did a retail business  
20 for the first three years until 1963. Then I became  
21 a market maker. After the market I had the 1962 new  
22 issue break, which was during the Cuban Missile  
23 Crisis and so on. When I had my first bad  
24 experience where I lost about \$30,000 for some  
25 family accounts --



1 Q. Right.

2 A. -- then I had to borrow \$30,000 worth of  
3 bonds from my father-in-law to be able to make my  
4 clients whole because I felt responsible for the  
5 losses that they incurred. That's why in like 1963  
6 I decided I didn't really want to be in the retail  
7 business. I wanted to be a market maker. So I  
8 start making markets from 1963 on.

9 Q. When did -- did there come a time when you  
10 went back into retail business?

11 A. No.

12 Q. When did you start what we call the  
13 investment advisory business?

14 A. Probably '70s.

15 Q. And you would not characterize that as a  
16 customer oriented business?

17 A. Not really. I knew, yes, it would be.

18 Q. Right.

19 A. It would be, but it was never -- I never  
20 had a business where a customer would call me up and  
21 say I want to buy stock or what should I buy. In  
22 other words, when I started my business it was  
23 always sort of like a discretionary-type business  
24 where people would give me -- you know, basically it  
25 was family and friends who would give me a certain

1 amount of money. And I would invest, started doing  
2 convertible bond arbitrage. I never did retail  
3 business, like if you called me up and said I want  
4 to buy IBM.

5 Q. Right.

6 A. It was always a hedge type of trading that  
7 I started doing.

8 Q. So in the early '70s you started into the  
9 IA business? Let's just call it that.

10 A. From starting with the big four accounts  
11 plus some family and friends.

12 Q. Okay. So the big four accounts started  
13 with you in the early '70s?

14 A. Yes.

15 Q. Now, the strategy --

16 A. Some of them.

17 Q. Okay. We'll get into that later if it's  
18 important.

19 A. Right.

20 Q. But what were the strategies you initially  
21 engaged in? You mentioned convertible arbitrage.  
22 Were you doing that right away?

23 A. Yes. That was right.

24 Q. Okay. Were you doing other investment  
25 strategies at the same time?

1 A. No.

2 Q. Okay. I'm going to ask you some  
3 definitions just for --

4 A. Uh-huh.

5 Q. -- you know, the record. What's a discount  
6 arb?

7 A. A discount arb is when -- well, a discount  
8 convertible it would be.

9 Q. Yeah. A discount convertible.

10 A. Yeah. A discount convertible is a  
11 convertible is selling at a discount to what it's  
12 worth, the stock. In other words, if a bond is  
13 convertible into stock let's say at \$10 a share and  
14 you're able to buy there would be a hundred -- the  
15 bond would be trading at a hundred and the stock  
16 would be trading at let's say ten. All right.  
17 That's what they call on the money.

18 Q. Right.

19 A. If the convertible bond, if you could buy  
20 the convertible bond below par, below 100, let's say  
21 you bought it at 98 and sold the stock at 10, you're  
22 doing a discount arbitrage because you can make --  
23 you're making two points on it. So you would buy  
24 the bond, short the stock at 10 and you lock in a  
25 bona fide profit of two points.

1 Q. In terms of convertible securities, there  
2 are different kinds of those; are there not?

3 A. Well, for the most part they're all the  
4 same.

5 Q. Well, they may have the same features, but  
6 some are --

7 A. Some are trade in premiums.

8 Q. Yeah, but what I meant by that is this.  
9 Some are bonds. Some are warrants. Some are  
10 rights. Some are preferred securities?

11 A. Yeah. Well, they're not bonds, though.  
12 Arbitrage securities could be convertible bonds,  
13 convertible preferreds, units, warrants, rights.

14 Q. All right.

15 A. That's all hedge type of trading.

16 Q. Right. And did you in your convertible  
17 arbitrage strategy use all of those types?

18 A. All of those, yes.

19 Q. You used all of those?

20 A. Right.

21 Q. And do you know whether bonds were a  
22 minority or a majority of the trades you engaged in?

23 A. They were -- well, depending upon when it  
24 was, particularly bonds would be the majority of it.

25 Q. Okay. What does that mean, when it was?

1           A. I mean, when I -- when I was doing it,  
2           there was always more volume in convertible bonds  
3           than there would be let's say in warrants, units or  
4           rights; but depending upon when it was, depending  
5           on, you know, for example, when AT&T split up and --  
6           and, you know, and became all the baby Bells that  
7           they traded, we made a market.

8                       We were the primary market maker. As a  
9           matter of fact, I have a copy in my records here of  
10          an ad that we ran in the Wall Street Journal that  
11          said that we made markets, you know, to banks,  
12          brokers and institutions in all of the convertible  
13          securities. We did a very big business --

14          Q. Right.

15          A. -- trading all the various AT&T break-up  
16          issues.

17          Q. In the normal course in the '70s, let's  
18          give it a time frame, are discount arbitrage  
19          opportunities plentiful?

20          A. Yes. There were convertible bonds traded  
21          -- first of all, you have to understand that most  
22          convertible arbitrage trading did not go through the  
23          conversion process, which he even -- Dubinsky even  
24          states that in his report. In other words --

25          Q. You mean you didn't go through the -- I'm

1       sorry to interrupt you, but just to clarify, you  
2       didn't go through the conversion process or the  
3       industry?

4             A.   The industry.  In other words, typically  
5       most convertible bonds should always trade at a  
6       premium.  In other words, when a bond trades at a  
7       discount, it's sort of a freak.

8             Q.   That was my question.  Thank you.

9             A.   Yeah, yes.

10            Q.   Okay.

11            A.   So that, you know, obviously, if you can  
12       buy a convertible bond at a discount, you would  
13       typically buy it and convert it because you have a  
14       guaranteed profit and you lock it up.  All right.  
15       But most convertible bonds create premiums because  
16       nobody in their right mind should -- you know,  
17       should ever, you know, buy a -- should buy common  
18       stock if you could buy a convertible bond at a  
19       discount.

20            Q.   Right.

21            A.   All right.  So typically, in other words,  
22       look, to give you an example, when I hired David  
23       Kugel when he -- David Kugel used to work for a firm  
24       of mine, for a friend of mine whose name was Mike  
25       Lieberbaum, all right, who had a firm called

1 Lieberbaum & Company. When I first went into  
2 business we were friends. We went to high school  
3 together, college together, and his father had a  
4 business, Lieberbaum & Company. And David Kugel  
5 happened to work for him as a convertible bond  
6 trader, you know.

7 So what happened was, but that firm went  
8 out of business. They decided to liquidate the firm  
9 and they all retired, you know. David Kugel was  
10 working for that firm and looking for a job. Now, I  
11 was trading convertible securities at that time, so  
12 Lieberbaum said to me can you do me a favor and hire  
13 David Kugel?

14 Q. Right.

15 A. And I said I don't really want to hire  
16 David Kugel. I'm not looking for another trader.  
17 And, quite frankly, David Kugel was sort of a pain  
18 in the ass. You know, nice guy, but he was very  
19 difficult to deal with because you couldn't have a  
20 conversation with him that made any sort of sense;  
21 but -- and we used to kid about that, you know.

22 This friend said look -- he was my good  
23 friend, went to school. He said look, I'm trying to  
24 find this guy a job. You know, I feel bad we're  
25 closing the firm. Why don't you hire him? So I

1 said I don't really want to hire him, Michael. So  
2 he said -- you know, so I said look, he had a Friden  
3 -- you probably are -- how old are you?

4 Q. Seventy-three.

5 A. All right. So you remember what Friden  
6 calculators were?

7 Q. Sure.

8 A. The old with the hand crank? This is  
9 before computers. Okay. Mike Lieberbaum's firm, he  
10 had a Friden calculator, which was expensive. And I  
11 was, you know, relatively young in the business. So  
12 I said I want -- if you're liquidating the firm, I'd  
13 like your Friden calculator because we used to use  
14 it to figure out all the convertibles, you know, you  
15 know.

16 So he said I'll tell you what. Take David  
17 Kugel and I'll give you the Friden calculator. So  
18 we always used to tease David Kugel and say the only  
19 reason that we hired you is for the Friden  
20 calculator. He used to be very sensitive to that,  
21 but that was really a true story.

22 Now, I came up with a concept of -- I said  
23 to David, I said this is your job. I said I want  
24 you to track every convertible security that exists,  
25 okay, and I want you to track and see what the



1 historical prices of the convertibles. Most  
2 convertibles, we trade at premiums. So we used to  
3 have a -- and we used to have to do all this by  
4 hand, you know, before computers with this Friden  
5 calculator. We would track every convertible bond  
6 and see when it was trading at a discount or when it  
7 was trading at a premium.

8 So historically if you knew that a  
9 particular convertible security traded let's say  
10 typically at a three point premium but now all of a  
11 sudden it went to a ten point premium, all right,  
12 you would know that that premium is too high. It  
13 should go back to historically to a three point  
14 premium.

15 So we would go ahead and we would set up  
16 the trade. We'd buy the convertible, short the  
17 stock, all right, and then wait, hold them open,  
18 which immediately had a loss. So you're setting up  
19 a trade where you had a loss, but historically the  
20 bond would close up and go back to a three point  
21 premium.

22 You would then unwind the transaction, all  
23 right, and you'd make a three point profit. It's  
24 called Chinese arbitrage. Don't ask me why it was  
25 called that. It was just ass backwards. So for

1 some reason that was what the industry -- so most  
2 convertible trading went on at premiums, you know,  
3 where you set it up. You had a loss, but you knew  
4 what your loss was.

5 It was no more than three points. And  
6 David Kugel used to have a huge spreadsheet  
7 literally like this long that had tracked all the  
8 convertibles. And we would just -- and that's what  
9 we would do. So we would do business with our  
10 customers, you know, doing this kind of trading.

11 I was doing it for the big four clients  
12 and, quite frankly, it was like bending down and  
13 picking up money. All right. Now, most people on  
14 Wall Street didn't want to trade convertibles like  
15 that because your profit was limited, you know. You  
16 know, your loss was limited, but your profit was  
17 limited.

18 Q. How scalable was that kind of trading?

19 A. It was -- well, it was -- everything was  
20 relative. You know, when I first started in the  
21 business my -- you know, what I considered to be a  
22 great profit was different than let's say Goldman  
23 Sachs did. All right. So in that -- when I went  
24 into business all the convertible securities were  
25 handled by a handful of European arbitrageurs.

1           The whole business was handled by Goldman  
2       Sachs, Rouss & Company. There were maybe ten  
3       foreign convertible firms. The joke in the industry  
4       was that when you called up and asked a convertible  
5       bond market maker what the price was, he would say  
6       what do you want to do? You know, that was what --  
7       they all had this heavy Jewish accent, but these  
8       guys were all money arbitrageurs in Europe.

9           Q. Right.

10          A. You know, and when they came to this  
11       industry, they started trading the convertible  
12       securities. All right. So after I got my brains  
13       beat in, which to me, \$30,000 loss in 1963 was a  
14       lot, I said listen, I can't possibly -- you know,  
15       can't stay in this business like this because my  
16       father-in-law is not going to keep on lending me  
17       money to bail myself out.

18                So I said I can't do retail business. As a  
19       matter of fact, the SEC said to me, Bernie, when  
20       they examined my firm, the first examination and  
21       they saw that I paid back the customers \$30,000  
22       because they lost money, they said, you know, you  
23       really can't keep doing this because how many times  
24       are you going to do this? He said if you're going  
25       to be responsible for your clients, you know, that's

1 not a business you want. So I said you know what?  
2 I looked around for what I could do that had limited  
3 risk. And convertible securities to me, I decided  
4 that that was a business I wanted to be in.

5 So but the problem was it was controlled,  
6 that business, by Goldman Sachs, by all these  
7 handful of firms, by Bear Stearns and so on. So at  
8 that time I went and I had -- I went to see Gus  
9 Levy, who was the chairman of Goldman Sachs, you  
10 know, and I went to Bear Stearns, Cy Lewis, who was  
11 the chairman of that, and I said to them, you know,  
12 I did things that probably people today would think  
13 were stupid.

14 I had them -- I went up there and I said --  
15 made an appointment with them and I said listen, I  
16 would like to trade convertible securities. And  
17 they said Bernie, you know, this is not a business  
18 for you. This is our business. You can't go into  
19 this business. And I told them the story and they  
20 -- I know it's hard for you to appreciate this now,  
21 but I was appealing to them in those days.

22 And I said look, give me a break. Let me  
23 make something. I told them my tale of woe and they  
24 said okay. Look, you know what? If you want to  
25 trade, if you want to trade convertible bonds, he

1 says I'll tell you what we'll do. We'll give you  
2 the odd lot pieces. We don't want to trade -- we  
3 don't want to buy ten convertible bonds and eight  
4 convertible bonds. We only want to buy 100 bonds  
5 and so on. So if you want the small ones, if you're  
6 willing to do the small pieces, you trade them.  
7 We'll send the customers to you.

8 And I said that's fine with me because  
9 whatever I made was good business for me. So I  
10 started doing that and I developed this relationship  
11 with these European arbitrageurs and they started  
12 sending me the odd lot business. And then, of  
13 course, kept on doing -- you know, I grew the  
14 business and that's how I got started in the  
15 business.

16 Q. I'll give you a break in a minute here.  
17 When you give an answer like that, and I'm not going  
18 to interrupt you because -- but it takes the court  
19 reporter a while to recover from that.

20 A. Oh, I didn't realize you were still doing  
21 it.

22 Q. She's constantly --

23 A. I didn't realize. I didn't realize this  
24 was on the record.

25 Q. Yeah. This is on the record.

1           A. I thought it was just curiosity. I'm  
2       sorry.

3           Q. No, no, no. Everything is on the record.  
4       Okay. Let's go back, though, just to the -- so  
5       we're back in 1970. You told us how this all got  
6       started, and the majority of your business at that  
7       point was premium arbitrage?

8           A. Both. Whenever I --

9           Q. Both. You were doing discounts, but you  
10      called discounts freaks just a moment ago; right?

11          A. Right.

12          Q. So when you spotted a discount opportunity  
13      by watching it as you did, did you not immediately,  
14      simultaneously, isn't that, you know, buy the stock  
15      or short the stock, I should say?

16          A. Well, you always sort of did what's called  
17      legging. In other words, when you -- you would buy  
18      even -- you would always buy the -- if you thought  
19      the bond was -- the mark was going to go up and you  
20      thought the bond was going to appreciate, the stock  
21      was going to appreciate because you know how to do  
22      it, you would buy the bond first and then you'd sell  
23      the stock later. You'd sell the stock on the way  
24      up. You know, depending upon which way you thought  
25      the market was going to go, that's how you determine

1 which piece to buy first.

2 Q. But --

3 A. You couldn't normally --

4 Q. I'm sorry.

5 A. You couldn't normally go in and buy the  
6 bond and short the stock and lock in the profit  
7 immediately. You had to take some degree of risk  
8 while you're setting it up.

9 Q. Isn't the classic definition of a discount  
10 arbitrage simultaneous buying and selling?

11 A. No.

12 Q. No?

13 A. I mean, no. That's not the way it  
14 realistically works. There's always -- I mean, if  
15 you could do it that way, that would be fine, but  
16 you're totally limiting your --

17 Q. Profit.

18 A. You're not only limiting your profit.  
19 You're limiting your ability to do it because you --  
20 you have to be able to judge the market as well.  
21 It's not just a simple of just going in and having a  
22 guaranteed locked-in profit because the arbitrageurs  
23 would close that up immediately. In other words,  
24 you're competing against these guys. Obviously, if  
25 you can do a trade and have a guaranteed immediate

1 profit, that's the most -- that's the most ideal  
2 situation; but so you can do that, but even if you  
3 could do that, if you really want to be a good  
4 trader, you would buy it at a discount, you know.

5 You start -- you buy the bond when it's a  
6 discount, but if historically it would always go to  
7 a premium, you wait, what's called lifting a leg, in  
8 other words, so you have a risk involved and then  
9 you'll unwind the transaction.

10 MR. SHEEHAN: I want to get to that later.  
11 I agree with that.

12 MS. CHAITMAN: I'm sorry to hear that.

13 MR. SHEEHAN: No. I agree with what he  
14 just said.

15 Q. (By Mr. Sheehan) If you hang onto it, that  
16 can happen, but isn't -- well, I won't say isn't.  
17 What's a fractional share?

18 A. A fractional share is less than 100 shares.

19 Q. When does that occur in an arbitrage  
20 situation?

21 A. Not very often.

22 Q. When you convert the bond, preferred,  
23 whatever you're converting, does it not always have  
24 a fractional share?

25 A. Sometimes yes and sometimes no.



1 Q. Do you credit a fractional share or what do  
2 you do with it?

3 A. Yeah. I mean, if, in fact -- if, in fact,  
4 a customer -- depends upon if you're talking about  
5 doing it for a customer or doing it for the firm?

6 Q. I'm talking about a customer here. Okay.  
7 You're now selling this arbitrage strategy to a  
8 customer. You go in. You buy the arb. I'm calling  
9 it an arb.

10 A. Right.

11 Q. And then you short the stock and you do it  
12 simultaneously. And when you do that, you get a  
13 fractional share?

14 A. Yeah. Typically if customers do a  
15 fractional share, you would give them the fractional  
16 share.

17 Q. Do you give them the stock or cash?

18 A. You could do either, both.

19 Q. There are actually fractional shares that  
20 trade on the exchange?

21 A. You make a fractional share. Typically you  
22 would give them a cash credit for the fractional  
23 share.

24 Q. Typical, right?

25 A. Yeah.

1 Q. But more likely cash a fractional share?

2 A. Yeah.

3 Q. Okay. When does that fractional share  
4 occur?

5 A. I don't know when. I'm not sure.

6 Q. Let me rephrase it. Does the fractional  
7 share not only occur when you sell the convertible  
8 security?

9 MS. CHAITMAN: Objection to form.

10 THE WITNESS: Does the fractional share  
11 ever occur?

12 Q. (By Mr. Sheehan) No. I said does the  
13 fractional share only occur after you sell the  
14 convertible security?

15 A. I'm not sure. I don't know the answer to  
16 that.

17 Q. Well, if you don't sell the convertible  
18 security, there can't be a fractional share; can  
19 there?

20 A. If you don't sell the security?

21 Q. Yeah. So I'm not selling the convertible  
22 security. Can there be a fractional share?

23 A. Probably not.

24 Q. Okay. That was my point. Let me see. So  
25 let's go back to 1970. Again, you know, you were

1 doing -- let me ask you, where were you doing the --  
2 and what I mean by this is market making or IA.  
3 Where were you initially doing the convertible  
4 arbitrage strategy.

5 A. Where?

6 Q. Yeah. Either market making -- where did it  
7 start, market making or IA?

8 MS. CHAITMAN: Objection to form.

9 THE WITNESS: Objection to form?

10 MR. SHEEHAN: Yeah. She can do that, too.  
11 She can do that.

12 THE WITNESS: Oh. It was one firm. You  
13 know, it was all done -- you know, at that time I  
14 was the only one doing it. It was I was the only  
15 trader when I first started, so it was me. It  
16 wasn't -- I didn't have -- David Kugel came in. You  
17 know, I don't remember when he came in, in '70  
18 something or other, but the whole firm was me. I  
19 was doing it.

20 Q. (By Mr. Sheehan) I know it's one firm, but  
21 my point is you had the market making, which is you  
22 as a wholesale market maker; right?

23 A. Right.

24 Q. Over here you've got your IA business,  
25 which is your discretionary trading?

1           A. It was -- but it was all done by me as one  
2 firm. It was always one firm. It may have been --  
3 you know, it was only later on when we had like  
4 different departments because the rules required you  
5 to have sort of different departments with different  
6 compliance procedures and so on and different  
7 supervisors, but when I started it was me.

8           Q. Okay. Just trying to figure out how this  
9 worked. Okay. So you used the market making  
10 inventory. I think this is your testimony. Tell me  
11 if I'm wrong. You used a market making inventory  
12 and used that inventory of stock in connection with  
13 the convertible arbitrage strategy in the IA  
14 business?

15          A. Correct.

16          Q. Okay. So the initial purchase would take  
17 place in the IA business -- I mean, the market  
18 making business?

19          A. Yeah, but if I was doing -- it was sort of  
20 one and the same. In other words, I was making a  
21 market around the customer security that I had.

22          Q. Right.

23          A. It depends upon sometimes if I -- sometimes  
24 I would just do the business for the market making  
25 for the profit and sometimes I would get a customer

1 order and I would do it for the customer.

2 Q. Right.

3 A. It depends upon -- you know, it was sort of  
4 all mixed in together, but it depends upon what was  
5 available.

6 Q. Well, when you're buying the stock in the  
7 market making business and, as you say, you're a  
8 market maker. You have to buy the stock. I  
9 understand how market making works.

10 A. Well, the firm had a limited amount of  
11 capital.

12 Q. Right.

13 A. So I could only -- you know, once I used up  
14 the capital of the firm, all right, obviously, let's  
15 say my capital could have been \$20,000 in the firm's  
16 capital. So I could only -- I could only -- once I  
17 finished buying -- I used that \$20,000 up, you know,  
18 if Carl -- let's say if one of my clients gave me  
19 \$100,000 to trade with, obviously, I would use that  
20 hundred thousand dollars for the client to do  
21 business.

22 I might do also 20,000 for the firm's  
23 capital, but it was -- you know, I'm -- obviously, I  
24 was limited to what I can do for the firm.

25 Q. So Shapiro, just use him. I know we're not

1 supposed to name names --

2 A. That's all right.

3 Q. -- but that doesn't apply to me. It only  
4 applies to you.

5 MS. CHAITMAN: Thank you.

6 Q. (By Mr. Sheehan) So anyway -- because I'm  
7 not suing the Picowers, so there you go.

8 A. Doesn't matter.

9 Q. Can yell at me if she wants. All right. I  
10 don't know how we're supposed to comply with this.  
11 So Carl Shapiro comes to you, gives you a hundred  
12 grand, invest it at your discretion --

13 A. Right.

14 Q. -- right? How do you deal with that? So  
15 how would you take that hundred grand and put it  
16 into a convertible arbitrage strategy?

17 MS. CHAITMAN: Objection to form.

18 THE WITNESS: I would buy whatever was  
19 available, you know, for 50,000 or 100,000, whatever  
20 was available.

21 Q. (By Mr. Sheehan) Of what?

22 A. In whatever security that I was trading  
23 when that was available.

24 Q. Available in what sense? As a preferred or  
25 as a discounted arbitrage?

1           A. It could be any one of them. There was  
2 no -- it was up to me. It was usually -- sometimes  
3 it would be at a discount since it would be at a  
4 premium, sometimes doing a unit, a warrant or a  
5 right. It could be anything.

6           Q. Would you take that hundred grand and buy  
7 that security we just talked about from your market  
8 making account?

9           A. Well, it depends. You know, if it was --  
10 if it was the market making -- if it was trading  
11 with the firm's capital, you know, it would be for  
12 the market making account.

13          Q. Right.

14          A. If I was working a customer order, you  
15 know, or with the customer's money, it would go into  
16 his account.

17          Q. Okay. Were you clearing those trades prior  
18 to DTCC yourself?

19          A. Clearing them myself, yeah.

20          Q. And how would you do that?

21          A. Those days the bonds would come in over the  
22 window. It was a physical delivery.

23          Q. Right.

24          A. You would pay for it. And then if it was  
25 convertible, typically we would use -- we would have

1 the bank convert the security. We would never  
2 convert the security ourselves physically because  
3 the convertible -- the clearing agent, the  
4 convertible agent may have been in Chicago. So we  
5 weren't going to get our trade until the Chicago.

6 Q. Right.

7 A. So we would use one of the banks. We would  
8 take the convertible security, send it over to the  
9 bank, give them instructions to convert.

10 Q. All right. At the beginning then you have  
11 a fairly active box?

12 A. Everything is relative. What do you  
13 consider active?

14 Q. Well, with no DTCC and you're  
15 self-clearing --

16 A. No.

17 Q. -- so you had physical possession of all  
18 your securities?

19 A. That's correct, right.

20 Q. Right. So and you used the banks just to  
21 -- you know, to exchange as you say when you were  
22 buying and selling?

23 A. Right.

24 Q. All right. You didn't use banks as  
25 depositories?



1           A. No. Well, if you were going to convert the  
2 security and use the bank to do that, you would send  
3 the security over to the bank and let them --

4           Q. Convert?

5           A. They would hold it. They would actually  
6 convert it. What the bank did depends upon what the  
7 bank's position was. The bank may have -- the banks  
8 may have been handling other customer accounts also,  
9 so they could actually borrow the securities,  
10 deliver you the securities.

11                 There's all sorts of various, you know,  
12 mechanisms of how they would handle it; but in the  
13 pure sense the bank would then take the security and  
14 deliver it, you know, to whatever method they use to  
15 Chicago or whatever it is.

16           Q. Yeah.

17           A. You know, they would what they call draft a  
18 collection. And then they would do the conversion,  
19 get the stock and they would deliver you the stock  
20 and then you would deliver the stock out.

21           Q. To cover your short?

22           A. Well, it wouldn't be covering -- yeah. It  
23 would be your fail to deliver.

24           Q. Right.

25           A. Right.

1 Q. Okay. So how many customers did you -- in  
2 the IA, I'm calling it IA, in the IA business did  
3 you have to start?

4 A. Probably, you know, let's say 25.

5 Q. Okay. By 1980 how big was the IA and how  
6 many customers did you have then?

7 A. Well, I had, you know, the four big clients  
8 for sure. I had European clients in France. I was  
9 dealing business with the Rothchilds with, you know,  
10 a number of French big clients. And then I had my  
11 father-in-law had sent up this account, Avellino &  
12 Alpern, which was a limited partnership where they  
13 had their clients.

14 And they could have had typically probably  
15 50 or 60 of their clients in his limited partnership  
16 that I traded for that limited partnership.

17 Q. Avellino & Alpern. Alpern is your  
18 father-in-law?

19 A. Yeah.

20 Q. Whose first name is Sam?

21 A. Saul.

22 Q. Saul, okay. And he had an account?

23 A. Yes.

24 Q. All right. Avellino, did he have an  
25 account?

1           A. Well, they had -- he didn't have an  
2 individual account himself. I don't recall that he  
3 did. They had it -- they just had this limited  
4 partnership account and he was part of it.

5           Q. What was the nature of the limited  
6 partnership, if you know?

7           A. They had -- they had this -- they had a  
8 bunch of their accounts. They were all sort of, you  
9 know, somewhat wealthy individuals that they did the  
10 accounting work for. So they -- they formed a  
11 limited partnership. It was sort of like an  
12 investment club where they -- let's say they had  
13 \$100 million. It's a round number.

14          Q. Right.

15          A. That might have had, you know, fifty  
16 clients. They couldn't have more than 100 clients  
17 because the regulations were that in order for you  
18 to not be an investment company, you had to have  
19 less than 100 clients, which they clearly had -- you  
20 know, that was never a problem for them. So let's  
21 say they had 50 or 60 different clients in there. I  
22 would -- I opened up an account.

23                 I had an Alpern and Avellino or Avellino  
24 and Alpern, whatever it was. That was the account.  
25 I would then treat that as one account, as a limited

1 partnership account. I would buy, you know, various  
2 convertible bonds for them. I would then, you know,  
3 send them the confirmation on the transaction. They  
4 would get the -- they would then split that up.

5 If they had 25 or 50 accounts, they would  
6 based upon the amount of money that each client had,  
7 that would be what percentage each client had of  
8 that -- of the limited partnership. And they would  
9 -- they would actually report the individual  
10 transactions. And each client would file his own on  
11 his tax return, which Avellino and Alpern would  
12 handle for them, being their accountant.

13 Q. Right.

14 A. They would show short-term capital gains,  
15 you know, on each -- on the transaction.

16 Q. So from the beginning were you aware that  
17 there were all these people behind Avellino and --

18 A. Oh, yeah, yeah, yeah. I knew them all.

19 Q. Okay.

20 A. That was before Mike Bienes got involved  
21 and my father-in-law retired. And then they went to  
22 that. That's how their problem started. They  
23 made -- he made a decision on his own without even  
24 telling me, you know, that they were issuing notes.  
25 They decided they would just pay them interest and

1 they would, you know, take all the actual  
2 transactions themselves.

3 Q. Let's talk about those notes. Would those  
4 notes guarantee interest to your knowledge?

5 A. The first time I found out about that was  
6 in 1992 when the SEC, you know, told me that they  
7 had all of these, that they had a number of -- as  
8 far as I knew, they had like I don't remember  
9 whether it was three accounts or four accounts. All  
10 different Avellino and Alpern accounts, but they had  
11 like maybe three limited partnership accounts, but I  
12 wasn't aware of the fact that they were actually  
13 issuing notes --

14 Q. Right.

15 A. -- you know, to them because I had already  
16 told them that you can only have 100 clients in a  
17 limited partnership. Otherwise, you would have to  
18 register as a -- as an investment company. They  
19 claim that they thought that they were okay because  
20 they were -- although they think they had like maybe  
21 300 accounts as it turned out what the SEC said, but  
22 they were a lot of family accounts.

23 So they said they were counting each family  
24 as one account, even though there could be a  
25 son-in-law, a son and so on and so forth. The SEC

1 basically's position was that they said look, as a  
2 matter of fact, when they called me up to tell me,  
3 they said -- you know, they asked me, you know, I  
4 got a phone call from the SEC to say, you know, you  
5 have this account, you know, these accounts, these  
6 accountants, you know, and they have too much money.  
7 They have too much money, too many clients on there.  
8 It's an investment company.

9 And I said -- and I told them how I was  
10 handling it and they said yeah, okay, that's fine,  
11 but these guys are paying notes. You know, it's  
12 different. So I said, well -- you know, I was upset  
13 with them. I said what the hell? They never told  
14 me. So when I called them up I said listen, I'm  
15 closing these accounts. I'm sending back the money.

16 The SEC said to me at the time, you know,  
17 you don't have to do that. He said, you know, you  
18 can just tell them to register, but I said no. I  
19 don't want to do that. So, you know, I sent them  
20 back all their money, closed their accounts. As a  
21 matter of fact, the SEC when they -- as soon as this  
22 happened the SEC came up for the whole examination.

23 They sent up the group chief from New York.  
24 They looked at the accounts. They saw that all the  
25 money was there. They saw that I was actually

1 buying the securities because they were able to --  
2 they looked at the -- at my stock record. They  
3 looked at DTC. They saw that I had the securities  
4 and so on. And, you know, I said I'm closing the  
5 accounts, and I did. And I returned all the money.  
6 And then I took in the accounts.

7 My father-in-law called me up and he said  
8 look, you know, these people are all crazy. They're  
9 sending -- they're hysterical. You know, they're  
10 relying upon the money to live on, these clients.  
11 And they said they didn't do anything wrong. This  
12 was all Mike Bienes's stupid -- so I said okay,  
13 fine. I'll open up individual accounts, you know,  
14 but I only want like \$500,000. I don't want an  
15 account for 50,000 or 75,000.

16 So I said the account -- each account  
17 could be 500,000 was the minimum. I said if they  
18 want to take a five -- if they want to form a family  
19 partnership, that's fine, but it can only be their  
20 family. I don't want anybody -- I don't want to  
21 have more limited partnerships. So they said fine  
22 and that was what we did. And they opened up a  
23 whole bunch of accounts, you know, like a few  
24 hundred accounts.

25 Q. The three partnerships of Avellino and

1 Bienes before the SEC, were you guaranteeing a  
2 return to them?

3 A. No, no, no.

4 Q. Were you trying to predetermine the amount  
5 that you would give them?

6 A. No. They had -- I told them what the  
7 expected return was. In other words, look, when you  
8 did arbitrage, anybody did arbitrage, there was a --  
9 you had a what you would consider to be what would  
10 be the reasonable rate of return for doing  
11 arbitrage. It's no different than if you do a  
12 covered option right, which was like the split  
13 strike conversion was.

14 Q. Right.

15 A. You know, you're not going to do it for --  
16 you know, typically you would do it for double the  
17 long bond rate. So if long bonds and Treasury bonds  
18 were playing let's say five percent, you would  
19 expect to make like 10 percent return; but, you  
20 know, it depends.

21 In 1980, for example, interest rates were  
22 12 percent. So, you know, unless you could do it  
23 for 25, 30 percent return, you wouldn't do the  
24 trade.

25 Q. Weren't you asking David Kugel to actually



1 look at convertible arb, arbitrage opportunities, to  
2 guarantee an outcome?

3 A. Not -- there wasn't such a thing as a  
4 guarantee of return. It's what you expected to  
5 make, called an expect return.

6 Q. Didn't David Kugel actually look  
7 historically backwards to take trades that had  
8 already happened --

9 A. No, no.

10 Q. -- and manufacture those into guaranteed  
11 results?

12 A. No.

13 Q. Why would he have testified to that?

14 A. I have no idea. I told you that.

15 Q. Why whatever the Trustee said or did  
16 influence David Kugel's testimony?

17 A. I don't know what happened between the  
18 Trustee and David Kugel. You know, as I said, it  
19 was -- you know, I was -- my clients all knew, you  
20 know, there was no secret as to what our strategy  
21 was or what it was. It was a very common strategy.  
22 It wasn't rocket scientists.

23 So people knew that if you're going to do  
24 hedge type of trading, whether it be any one of the  
25 different kinds of arbitrage or hedge trading, what

1 your return would be. You wouldn't do it if you  
2 didn't make at least double the bond rate. It  
3 wouldn't pay to do it. So clearly David Kugel knew.  
4 All my traders know we're not going to tie up the  
5 firm's capital for ourselves or for a client unless  
6 we can -- we have a good reason to believe at least  
7 our goal was to make double the long bond rate.

8 So depending upon whether the bond rate  
9 was -- let's say in 1980, for example, unless I  
10 thought I could make, you know, 25 or 30 percent  
11 return, you know, I wouldn't -- wouldn't do the  
12 trade. If the interest rates were five percent,  
13 then ten percent looked attractive to do it.

14 So if I -- David Kugel or any of my traders  
15 knew, you know, don't tie up the firm's capital,  
16 don't do a trade for making two or three percent,  
17 might as well put your money in bonds.

18 Q. Right.

19 A. So, you know, David Kugel knew even if he's  
20 trading for his own account, if David Kugel or any  
21 of the traders came to me and said, well, okay, I'm  
22 tieing up the firm's capital and I'm making five  
23 percent return, I'd say what are you? Crazy? I  
24 mean, you know, we didn't do that. As a matter of  
25 fact, we used to send our client, we had what they

1 call a portfolio evaluation report where we would --  
2 a customer -- would send them when we were doing  
3 arbitrage what the expected return was, what their  
4 actual return or how much was their over and under.  
5 You must have seen that these reports, they were  
6 part of our records that were generated.

7 You saw that we said expected return, over  
8 and under return and so on and so forth. And  
9 depending upon the strategy and what you wanted to  
10 do, that's what you made. So all of our -- when  
11 people came to do arbitrage for us, it was always  
12 from day one that the return was going to be -- that  
13 the goal was to make double the long bond rate.

14 Q. How could you guarantee that?

15 A. We didn't guarantee it. It's what we  
16 expected. We didn't guarantee anybody.

17 Q. Did you ever not do it?

18 A. Of course. What do you mean did we ever  
19 not do it?

20 Q. Did you ever not do what you expected?

21 A. Sure, at times.

22 Q. So if we go through your records, you will  
23 have losing periods of time?

24 A. Look, let me -- I see where you're going.

25 Let me -- let me tell you something. Let me give

1 you an example; okay?

2 Q. Yeah.

3 A. When --

4 MR. SHEEHAN: Are you okay?

5 MS. CHAITMAN: Yeah.

6 MR. SHEEHAN: All right.

7 THE WITNESS: When we were doing --  
8 because nothing I'm telling you is not something  
9 that was widely known and was given to reporters, to  
10 people that wrote the books and so on. Nothing in  
11 Madoff is really a mystery. All right. When we did  
12 -- the only mystery was that we weren't actually  
13 doing the trades, but our strategy was always very  
14 clear.

15 So I'm going to tell you an example, give  
16 you an example of one. The chairman of UBS, Union  
17 Bank of Switzerland, one of the world's great Nazis  
18 if you ever met him --

19 MR. SHEEHAN: I did.

20 THE WITNESS: -- came up to my office.  
21 All right. And because when we were doing the split  
22 strike trades, all right, everyone said, well,  
23 listen, you know, Madoff is making double -- he's  
24 making -- you know, you know, he's making like a  
25 12 percent return, which in those days, you know,

1 was a very good return. And the guy never has -- he  
2 very rarely has a losing quarter, okay, which was  
3 true. He very rarely had a losing quarter.

4 And he would say, well, how the hell do  
5 you always -- you know, how does that happen? I  
6 said wait a minute. You understand that -- you  
7 understand how the transaction works. And now  
8 literally the Chairman of Union Bank of Switzerland  
9 in my office and chairman of almost most of these  
10 banks along with the guys that ran their trading  
11 desk because when they were doing the due diligence,  
12 everyone wanted it figured out. Madoff can't be  
13 this smart, so what is the strategy, you know?  
14 Explain it to me.

15 So I'd say okay, fine. And I would, you  
16 know, show them what the strategy was, very vanilla  
17 covered right with a quick wrapper. So that was  
18 something that we sort of started, but everyone  
19 understood what it was. They said -- I said and,  
20 all right, so you understand that your loss is going  
21 to be limited because the put is going to kick in.

22 So your loss is limited basically to one  
23 or two percent on each trade and your profit is  
24 typically, let's say, three percent. So you have a  
25 two-to-one sort of ratio, all right, but you

1 definitely from the day we start the trade, you  
2 definitely can lose. If the market goes against us  
3 and we're guessing wrong, we're going to lose one or  
4 two percent. If we're right, we're going to make  
5 three percent.

6 You're never going to make really more  
7 than that because then you're going to be called  
8 away. Then that was the strategy. So let's say one  
9 percent loss, three percent, and everyone understood  
10 that. We said okay. Now, typically the strategy is  
11 like a three-month strategy because of the 90-day  
12 options and so on and so forth.

13 We said so if you look at, you know, over  
14 the course of a year, maybe we'll have three or four  
15 losing quarters and the rest of it, you know, we  
16 have gains, which everybody said, well, that's still  
17 pretty good, you know. And we said you understand  
18 the reason why you don't -- that the whole -- the  
19 key to the strategy is that you're never forced to  
20 liquidate the strategy even -- you're going to be  
21 wrong.

22 We're going to set it up and we think the  
23 market is going to go up. We may be wrong. You  
24 know, two days after we set the strategy up, the  
25 market may go against us and we may have a loss, but

1 we don't have to sell it out because we have the  
2 put. Until the put expires we can keep the trade  
3 open, waiting for the market to reverse and go up.  
4 If the market goes up, then we're fine and we're  
5 going to make a profit.

6 If the market doesn't go up and continues  
7 to go down, we're going to have a loss; but the big  
8 key is you're not forced to sell prematurely unless  
9 it happens within three months.

10 Q. Can I ask you a question?

11 A. Yeah.

12 Q. Didn't all your puts expire?

13 A. Huh?

14 Q. Didn't all your puts expire?

15 A. Eventually. Eventually they expired.

16 Q. Because you never lost?

17 A. No. What do you mean never? Wait a  
18 minute, wait a minute. Let me finish.

19 Q. Then you never lose?

20 A. Yes, of course, we lost.

21 Q. But you -- all your puts expired. Saul  
22 Katz said to me that he asked you one time why are  
23 we buying puts, because we never lose. Do you  
24 remember that?

25 A. Oh, a lot of my traders would say let's not

1 buy the puts because why are we going to pay the  
2 premium on the puts?

3 Q. Yeah.

4 A. And I would say because that the key to the  
5 strategy is to be able to limit your loss.

6 Q. Right.

7 A. You know, you're not forced to sell.

8 Q. So we're on the split strike now, and I  
9 want to go back to convertible arb, but just one  
10 thing. Isn't split strike strategy, which is  
11 common, it's not unknown, a conservative strategy?

12 A. Yes.

13 Q. Right. And you don't expect big returns  
14 from that; do you?

15 A. No.

16 Q. Because you capture --

17 A. Right.

18 Q. Yeah, okay.

19 A. So let me finish --

20 Q. Sure.

21 A. -- the story; okay?

22 Q. Didn't mean to cut you off.

23 A. When they said -- you know, I said did you  
24 ever look at the strategy, you know, on a day-to-day  
25 basis and see what happened? So the guy said, well,



1 no. I'm only looking at it, you know, over the  
2 course of a year or the course of months. And I  
3 noticed that over the course of a year we had three  
4 losing quarters, we had one losing quarter or we had  
5 one losing month.

6 MR. SHEEHAN: Bless you.

7 THE WITNESS: Really, we had very few  
8 losing quarters, but we did have losing months I  
9 said if we close the trade out. So I said let me  
10 show you -- let me show you a chart that shows you  
11 what the strategy did on a daily basis. And they  
12 would look and they would see that they had the  
13 strategy set up for 90 days, but it could be ten  
14 days where we actually had a loss had we closed it  
15 out.

16 So if I was forced to close it out because  
17 the option was going to expire, the put was going to  
18 expire or not, I said there are lots of -- I said if  
19 you look at the trade, you would see that this --  
20 you would see it looks like this. Okay. Now, we  
21 would only close it out hopefully when we had it  
22 here, but if we closed it out when we were not here,  
23 we'd have a loss.

24 Q. Right.

25 A. So then he said ah. So there are loss --

1       there would be loss trades. If they called me up  
2       and said to me I want my money back, close out the  
3       strategy, which no one -- very rarely did anyone do  
4       that except in 2008 when people were getting margin  
5       calls all over the place; but before that nobody  
6       ever called up and said sell it out because I would  
7       then say to them, listen, if you force me to sell it  
8       out, I'll sell it out. I'm sending your money back.  
9       Don't come back. Okay.

10           Q. I want to go back to the -- but I want  
11       to --

12           A. And let me just tell you one other thing.

13           Q. Sure.

14           A. You've heard of Jim Simons; right?

15           Q. Of course.

16           A. Okay. Now, I handled Jim's private  
17       account, his foundation account.

18           Q. Yeah.

19           A. Now, when Jim Simons, who's probably one of  
20       the smartest traders on Wall Street today, all  
21       right, you know, called me up and he said to me,  
22       look, he said, Bernie, he said you know what? He  
23       said I'd like you to handle all of Renaissance  
24       business as a dealer. Your market -- I want your  
25       market makers to trade because we're sending our

1 business down on the floor of the exchange of the  
2 two Bear Stearns and, you know, they're clipping us  
3 left and right on commissions and so on. So Madoff  
4 has the fastest execution in the industry. I'm  
5 going to let you do our business.

6 So I said really, Jim, I don't want your  
7 business because your traders are too good. So I  
8 don't really want Renaissance business. So he said  
9 come on, come on. We'll give you the good business.  
10 I said don't tell me you'll give me the good  
11 business. You aren't giving me all your business  
12 and I don't want my traders competing against yours  
13 because we're going to lose money.

14 So he convinced me. He said look, just  
15 take it, you know, but also I also want you do my --  
16 handle my foundation personal account. So he set up  
17 an account, I don't remember, that was two million,  
18 ten million. I don't remember it anymore. You  
19 know, it wasn't a big account, but let's say I think  
20 it was in the neighborhood of 10 or \$20 million.

21 So he understood as every one of my  
22 clients understood the transaction. They saw it  
23 because they got the confirmations. They saw what  
24 was buying and selling. They had the ability to see  
25 whether or not the trades could be done or couldn't

1 be done, and they -- so they saw the trade and the  
2 trade made sense. If you'll remember going back  
3 when you came down to visit me, I said to you when  
4 you told me we're going to sue all these funds and  
5 this, I said do yourself a favor.

6 If you think -- if you're going to believe  
7 Harry Markopolos, who's one of the big idiots in our  
8 industry, the great whistleblower, and believe him  
9 that this strategy did not make any sense and if  
10 you're going to say the reason your funds should  
11 close out, you know, should have noticed a red flag,  
12 don't say the strategy didn't make sense because I'm  
13 telling you we had virtually every important trader  
14 on Wall Street and the chairman of every firm had a  
15 client -- had accounts with Madoff.

16 They knew the transaction made sense to do  
17 it. They knew what my advantage was of being a  
18 market maker and doing all this volume.

19 Q. But they also knew you weren't doing split  
20 strike; isn't that true?

21 A. No.

22 Q. Didn't they all know you weren't doing  
23 split strike?

24 A. No, no.

25 Q. They knew you were telling them that?

1           A. No. And if you believe that anybody  
2           thought that I would -- why would anybody give me  
3           money thinking that I was committing a fraud?

4           Q. Why did Jim Simon take his money out?

5           A. Because I'll tell you why Jim Simons --  
6           because Jim --

7           Q. You know, he's testified so I have sworn  
8           testimony of why he did, so let's hear what you  
9           think.

10          A. Yeah. I know why. I'll tell you why he's  
11          closing money out. Because he had -- he got wind  
12          that the SEC was investigating me because they were  
13          investigating him. What happened was the SEC was  
14          investigating all of the hedge funds, had nothing to  
15          do with Madoff. All right.

16                 And the -- and Jim Simons, you know, was  
17          getting -- had an inquiry about his firm. All  
18          right. And one of the things was Madoff, was doing  
19          business with Madoff. So Jim Simons knew that the  
20          SEC was questioning me and, therefore, he wanted to  
21          close out the transactions.

22                 He had no idea that I wasn't doing the  
23          trades because -- and none of them did. I don't  
24          care what anybody says now. Well, I always knew.  
25          Believe me, none of these guys would have done --

1 they're not crazy. Why would they want to be giving  
2 money to a firm that was committing a fraud? They  
3 didn't know. Now, there were some firms that didn't  
4 care whether I shorted the stock to them.

5 As a matter of fact, as I -- as I told  
6 people, all right, I got a call from Switzerland  
7 once. This was -- I don't remember what year it  
8 was.

9 Q. I think we're drifting from Jim Simons, but  
10 you're going to connect that up or --

11 A. No, no.

12 Q. Okay.

13 A. This was from -- I get a call from  
14 Switzerland from one of the hedge fund managers in  
15 Switzerland and he says hey, Bernie, you know what?  
16 He said there's a rumor going around Switzerland  
17 that the reason that you are -- you're able to do  
18 these trades so successfully, which I never  
19 considered being so successful, was that you're  
20 front running -- you're front running all your --  
21 your market making orders, which, by the way, that's  
22 what Markopolos told the SEC.

23 You know, because, obviously, you know,  
24 if, in fact, I was front running the orders, you  
25 know, that would be a great thing. It would have

1       been, unfortunately, illegal and very easy to check  
2       whether anybody is front running. And believe me, I  
3       know that because I know what the rules are in the  
4       industry. And when Markopolos went to the SEC and  
5       said you're front running, the SEC said Bernie  
6       wouldn't be front running.

7               So when they -- when they looked at it and  
8       they looked at all the information, they said no,  
9       no, this guy is not front running. And the reason I  
10      wasn't front running, because I wasn't doing the  
11      orders. So, of course, I wasn't front running  
12      because I wasn't actually doing the trades. So the  
13      SEC looked at that. They didn't know who was doing  
14      the trades, but they knew I wasn't front running.  
15      Now, let me finish. Switzerland thought I was front  
16      running.

17             Q. I've been very good here.

18             A. You know what they said, front running?  
19      They said if you're front running, that's great  
20      because front running isn't illegal in Switzerland.  
21      We don't care if you're front running. If the SEC  
22      closes you down for an SEC violation, so you'll give  
23      us our money back. We're happy. That's not our  
24      problem.

25             Q. I'm aware of that.

1 A. And I said I'm not front running. I wasn't  
2 front running because I wasn't doing the trades.

3 Q. Right. And the reason you were always  
4 successful is you were using yesterday's newspapers;  
5 correct? You weren't actually trading, so you made  
6 those trades based on yesterday's newspapers?

7 A. When I wasn't doing the trades, yes.

8 Q. Yes.

9 A. Yeah. That's no secret. I said that.

10 Q. So, therefore, no one, including Jamie  
11 Simon, could replicate that; could he?

12 A. He could have if he was a market maker,  
13 yeah.

14 Q. How could he do it without yesterday's  
15 newspaper?

16 A. Let me ask you, don't you think that  
17 they -- that they knew that I -- don't you think  
18 that they originally thought that I was doing the  
19 trades? Do you really believe that anybody gave me  
20 money and knew that I was committing a fraud?

21 Q. People do it every day, Bernie.

22 A. Not these guys.

23 Q. All right. People do it every day.

24 A. Not these guys. Don't believe that, David.

25 MS. CHAITMAN: Is that what Simons



1 testified to?

2 MR. SHEEHAN: Simons testified he couldn't  
3 replicate what you were doing and got out.

4 THE WITNESS: Yeah.

5 MR. SHEEHAN: That's what he said.

6 THE WITNESS: Yeah, but do you know why he  
7 couldn't? Because he wasn't a market making firm.  
8 He wasn't doing the volumes that we were doing.  
9 That's why he couldn't do it.

10 Q. (By Mr. Sheehan) I mean, yours was all  
11 fictitious?

12 A. Wait a minute. It was fictitious because  
13 -- all right. Let me --

14 Q. It never happened.

15 A. Since you want to know this.

16 Q. No, no. Let's go back. We've got all day  
17 tomorrow to talk about this.

18 A. Okay.

19 Q. I want to get back to the early '80s. All  
20 right?

21 A. But let me just finish. Let me explain  
22 something to you.

23 Q. All right. Go right ahead. I won't cut  
24 you off.

25 A. Okay.

1 Q. I won't cut you off.

2 A. The people always wanted to know how much  
3 volume I was doing. Okay. That was the big secret.  
4 How much money is Bernie Madoff doing? Okay. And  
5 typically they thought that I was doing \$20 million,  
6 \$20 billion.

7 Q. Billion, yeah.

8 A. That was the -- that was the consensus. I  
9 was doing 20 billion; okay?

10 Q. Yeah.

11 A. So it was about 20 billion because that --  
12 because when I filed an ADV report, the most I  
13 showed was 16 billion.

14 Q. Right.

15 A. All right. But so they thought that it was  
16 20 billion, but let's say it was when they finally  
17 got the ADV report in 2006, it showed 16 billion.  
18 So everybody said, well, 16 billion, that's a lot of  
19 money; but this is -- how does Bernie Madoff do the  
20 trades?

21 Okay. Number one, typically he never had  
22 more than 50 percent of the money invested.

23 Fifty percent was in T bills, 50 percent was in the  
24 marketplace. Sometimes it was 100 percent, but it  
25 most of the time was not 100 percent, but let's

1 assume it takes 16 billion. Let's assume I invested  
2 16 billion at the most, which is what they thought.  
3 Okay. The \$16 billion was invested over a period of  
4 four days, you know. So, you know, it's 4 billion a  
5 day, all right, at most, was 4 billion or 2 billion  
6 depending upon how you want to look at it.

7 Q. Without an ounce of volatility?

8 A. Huh?

9 Q. No volatility?

10 A. Four billion dollars, for me to invest \$4  
11 billion when you're doing 10 percent of the volume  
12 of the business is nothing. So the people that --  
13 believe me, everything that you're saying, when guys  
14 first came in, everybody figured, well, this guy  
15 must have -- must be doing something wrong because  
16 how could he possibly be making this profit? All  
17 right. So then I -- but I heard that all from day  
18 one when I was doing the trades, you know.

19 Q. In the '80s?

20 A. No. I wasn't doing this in the '80s.

21 Q. You said you were doing the trades?

22 A. You're doing convertible bonds.

23 Q. Right.

24 A. I wasn't doing split strike.

25 Q. Right.

1           A. I'm talking about when I was doing  
2 convertible bond trades, I wasn't doing it for  
3 funds. I was doing it for -- just for my clients,  
4 and that was no big deal for me to do that. I mean,  
5 you're not -- now, you can sit here and say that I  
6 never did the convertible bond trades because  
7 that -- I wasn't doing the convertible bonds trades  
8 to be a problem at all.

9           I mean, I was the largest convertible bond  
10 trader in Wall Street at that time. Nobody thinks  
11 that I was -- I wasn't managing that much money in  
12 convertible bond trades even with the four big  
13 clients because I wasn't doing convertible bonds for  
14 them in 1980.

15          Q. When did the big four start the margin  
16 accounts?

17          A. What happened was I was doing the big four  
18 accounts when I started doing business for them.  
19 I've been doing -- it started in the '70s. Someone  
20 like Levy came in in the '90s and so on, and so but  
21 let's assume I started doing it let's say in the  
22 '80s when I was doing it. All right. And everybody  
23 was doing convertible bond trades. And in those  
24 days they were making, you know, 25, 35 percent. It  
25 was no big deal to do that.

1 Q. All through the '80s, I just want to be  
2 clear, the big four did convertible bond? They  
3 didn't do different strategies besides that?

4 A. No. Because what happened was --

5 Q. Okay.

6 A. -- you know, you know, in 1980, before that  
7 up to 1980 I was doing convertible bonds with them.  
8 All right. The four big accounts were doing  
9 convertible bonds. And what happened was in 1980  
10 they came to me. They were doing straddles.  
11 Everybody that was doing short-term trading in Wall  
12 Street was hedging their trades using commodity  
13 straddles.

14 Q. Right.

15 A. You remember, you know what commodity  
16 straddles, silver straddles?

17 Q. Yeah, of course.

18 A. Okay. So they were doing silver straddles  
19 through Bear Stearns and through E. F. Hutton and so  
20 on.

21 Q. The big four?

22 A. Big four. All right. They were hedging  
23 because the arbitrage was all short-term capital  
24 gains. So they were making short-term capital gains  
25 making, you know, nice returns; but they -- you

1 know, tax rates, you know, were 80-some odd percent,  
2 you know. So they -- they were using the silver  
3 straddles to hedge themselves. And that was fine  
4 until the IRS started challenging the silver  
5 straddles saying that there was no risk. These were  
6 sham transactions and so on.

7 Q. Right.

8 A. And they were doing them through -- we  
9 didn't do that business, but I was doing it for  
10 these clients. I had recommended them to Bear  
11 Stearns and Carl Shapiro had a son-in-law at E. F.  
12 Hutton, so they were doing the straddles.

13 So in 1980 they came to me and they said  
14 look, you know, Bernie, isn't there anything we can  
15 make long-term capital gains, you know, because the  
16 short-term, the arbitrage, the profits are great,  
17 but the tax rates are killing us. And now we can't  
18 use the straddles because the IRS is challenging the  
19 commodity straddles for us.

20 So what can you do to generate long-term  
21 gains? So I said wait a minute. Look, forget about  
22 the real estate shelters because that was being  
23 charged -- that was being -- that was being  
24 threatened. Picower was doing the leasing things.  
25 He had his leasing companies, cockamamie thing that

1 he was doing. You know, everybody had their -- you  
2 know, was doing something. All right. So they came  
3 to me. Can you do -- what can you do to generate  
4 long-term gains? I said the only thing you can do  
5 for long-term gains is actually to put on long-term  
6 positions, not do the arbitrage.

7 You can just -- you've got to buy  
8 portfolio of stocks, but in order for that to work,  
9 the market has to go up. And I can't tell you  
10 whether the market is going to go up, you know,  
11 from, you know, 1980.

12 Q. Right.

13 A. I said so you want to -- you know, that's  
14 the only thing that's available. I don't want to do  
15 any real estate tax shelters. I don't want you to  
16 do any silver straddles anymore. You know, this is  
17 the only game in town if you want to do that; but,  
18 you know, I don't know if the market is going to go  
19 up. I said I can put together a portfolio of  
20 stocks, a diversified portfolio. I happened to like  
21 the market, you know, in 1980, but there's no  
22 guarantee.

23 And, you know, so I don't know what to  
24 tell you. So they said, well, can't you hedge it?  
25 You're supposed to be the great hedger. Can't you

1 hedge it? I said yeah. You can hedge it. There  
2 are certain ways you can do it. You can go short  
3 against the box. You know, you can do, you know,  
4 pairs trading; but, again, you have to hold them for  
5 a one-year period. That was the holding period.

6 So I, you know, explained to them all this  
7 stuff and I said and there's no guarantee. You want  
8 to do it, but, you know, it's better than nothing if  
9 you want to do it. So they said fine. Let's do  
10 that, you know. So I said so all right. Now,  
11 coincidentally at the same time they were doing  
12 that, I was doing a hedging strategy for a group of  
13 European investors.

14 Q. I remember you telling this already.

15 A. Yeah. So they as it turned out, it would  
16 have been -- they would have been a great  
17 counterparty for these other traders because they  
18 were doing the hedging strategy. As I explained to  
19 you, they had to be in -- they had to be in U.S.  
20 securities in order to hedge the French franc and so  
21 on and so forth. So, you know, I said to them okay,  
22 look, this is the deal.

23 I can set up portfolios or strategies for  
24 you guys for the big four. I said I have  
25 counterparties that supply the liquidity to you on



1 the other side, put you guys together. The only  
2 problem is you have to all understand that you can't  
3 unwind these strategies prematurely because these  
4 guys, you know, you're going to screw them up. So  
5 if you're going to unwind, you both have to be  
6 agreed to unwind at the same time.

7 So Shapiro and the rest of these guys, you  
8 know, Picower, said okay, fine. It's a risk, but  
9 it's better than what we were doing anyhow. We have  
10 no other choice, so let's do it. So I put the  
11 portfolio on for the four big clients, which is not  
12 difficult to do.

13 Q. When did you do that?

14 A. 1980 I started doing that with them.

15 Q. Okay.

16 A. I put the portfolio on for them. You know,  
17 the portfolio and the French guys were doing it.  
18 Their side was great. It was fine. And the market,  
19 of course, started to march up from 1980 to 1987.  
20 Everything was going along fine. And, of course, my  
21 four big clients, being the greedy people that they  
22 were, never wanted to close out the transaction.

23 They wanted to keep rolling it, which is  
24 very typical because everybody -- nobody wanted to  
25 close out the money. They just -- let's roll it,

1 you know, just keep rolling it and because why  
2 should I pay the tax? Why do I have to pay the tax  
3 money? The rate was still, you know, even on those  
4 long-term gains were better than short-term gains.

5 They didn't even want to pay that, so but  
6 the market accommodated everybody. So from 1980 to  
7 1987 everybody was making a lot of money doing this  
8 strategy and everything was fine. Comes the crash  
9 in 1987. The shit hit the fan or forget about  
10 repeating that, you know, and these -- my four big  
11 clients said holy cow. We've now, you know, had  
12 seven years of long-term gains.

13 You know, we're going to get killed.  
14 We're going to give all that up with the market  
15 going down. I said relax. Don't worry about it.  
16 The market eventually will turn, I said, and you  
17 guys made a commitment to us. We have this  
18 commitment to, you know, to the French people. And  
19 I'm not going to unwind. I can't unwind them, you  
20 know.

21 So these guys -- that's when they started  
22 to hold on. They said close out the -- sell the  
23 longs, don't worry about the shorts. The market is  
24 going to go -- continue to go down. We're not  
25 worried about it. We'll hold you harmless for any

1 losses.

2 MR. SHEEHAN: Okay. You want to take two  
3 minutes? I thought you would.

4 THE COURT REPORTER: Yes.

5 MR. SHEEHAN: All right. I know we have  
6 to leave soon, but I --

7 MS. CHAITMAN: Yeah. No. Whatever you  
8 want, yeah.

9 MR. SHEEHAN: I don't want this young lady  
10 to have her hands fall off because when you get on a  
11 roll, Bernie.

12 THE VIDEOGRAPHER: Going off the record.  
13 The time is 2:14 p.m.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: Back on the record.  
16 This beginning disc number four. The time is  
17 2:25 p.m.

18 Q. (By Mr. Sheehan) Do you recall when you  
19 started using DTC?

20 A. No.

21 Q. Would it help if I called it NSCC instead?

22 A. What year? Certainly before DTC because,  
23 you know, I don't remember the year. It's in the  
24 report somewhere.

25 Q. Right. Early '80s? That work for you?

1 A. Yes, yeah.

2 Q. Early '80s. We'll work with that.

3 A. Yeah, because I was -- I was chairman of  
4 NSCC 1984 through 1987, so --

5 Q. Right. At that point you're still  
6 obviously -- were your stocks then on deposit at  
7 NSCC?

8 A. No. NSCC didn't hold. They weren't a  
9 depository.

10 Q. Okay. What function did they perform?

11 A. Just the clearing and settlement, the  
12 settlement, money settlement, the netting. So  
13 securities weren't delivered there.

14 Q. Uh-huh, okay. So were you still holding  
15 your securities physically at that point?

16 A. Yeah. We were holding them physically or  
17 down at the banks.

18 Q. Uh-huh, okay. Where were you located in  
19 the early '80s?

20 A. 110 Wall Street probably. We moved up in  
21 sometime in the mid-'80s, I think, to 110 Wall -- I  
22 mean, to 885 3rd.

23 Q. Okay. I wanted to clarify something else,  
24 too. You talked earlier about DTCC; right? You had  
25 a -- the account there was 646?

1 A. Yes.

2 Q. Did you have any other account?

3 A. No.

4 Q. Okay. You talked about all your stocks  
5 would be there except for bank loans. Do you  
6 remember that?

7 A. Right.

8 Q. All right. Would not the fact that there  
9 was a bank loan with regard to certain stocks also  
10 show in your account?

11 A. There would be a what?

12 Q. If you had a stock loan?

13 A. Right.

14 Q. All right. To the bank and the bank,  
15 therefore, had your stocks pledged --

16 A. At DTC.

17 Q. Yeah, DTC. It would also show in your  
18 account that you had so pledged those stocks; would  
19 it not?

20 A. Yes, probably.

21 Q. Okay. Could you pledge customer stocks?

22 A. Could we?

23 Q. Could you?

24 A. Yeah.

25 Q. You could use that for stock loan purposes?

1 A. Yes.

2 Q. Okay.

3 A. Either at -- it depends upon whether we did  
4 it at DTC or we did it at our banks, at one of the  
5 banks.

6 Q. Okay. So let's go back to the 1980s and  
7 the long strategy that you started --

8 A. Right.

9 Q. -- for the big four. The big four at the  
10 same time, were they still doing convertible arb --

11 A. No.

12 Q. -- at that point?

13 A. They were -- some of -- I think Stanley  
14 Chase was doing it for some of his accounts. He was  
15 doing -- he was still doing convertible bonds. Oh,  
16 in 1980 you're talking about?

17 Q. In the '80s when you started the long  
18 strategy.

19 A. In the '80s. He may have been doing it.  
20 They may have been doing it for some of their  
21 accounts, some of their family accounts, you know,  
22 the kids' accounts and so on.

23 Q. Yeah. Would you say the majority of your  
24 convertible arbitrage strategy in the '80s was  
25 premium trading?

1 A. I don't know. Probably, probably.

2 Q. Okay. And how many customers? You know,  
3 let's count Avellino and Bienes as one.

4 A. Right.

5 Q. And then you've got the big four. That's  
6 five. How many more customers did you have up to  
7 1987? I know that's hard, but just your best  
8 thought on that.

9 A. My brain is a little fried to begin with --

10 Q. Yeah.

11 A. -- so but I don't know. Probably I would  
12 say no more than 50, I would say. I'm guessing.

13 Q. Okay. So in 1987 there's a crash and  
14 you've testified to this. I'm not going to repeat  
15 it. You may, but I'm not going to; but seriously,  
16 why did you feel compelled to cover those shorts?

17 A. Which shorts?

18 Q. Well, when you were saying you would cover  
19 the short positions of the big four and they  
20 indemnified you, they were big boys. Why wouldn't  
21 you just say to them hey, you're in the game?

22 A. Do you know how many times I ask myself  
23 that now?

24 Q. Yeah.

25 A. I mean, look, I'm not proud that I did what

1 I did, you know. I spent a lot of hours with a  
2 psychologist here trying to analyze why I did what I  
3 did or I -- I had a -- a very special relationship  
4 with the big four clients, all right, particularly,  
5 you know, with Carl Shapiro and Norman Levy and Stan  
6 Chase.

7 Picower was a little bit different, but  
8 look, one of my problems was I always wanted to  
9 please everybody. You know, that was my thing  
10 forgetting about whether it was my -- you know,  
11 whether, you know --

12 Q. But this was a billion dollars, a billion  
13 dollars that you were going to go at risk for?

14 A. Well, I was -- I had very special  
15 relationships with the people in France. I had a  
16 special relationship with Shapiro, and I had given  
17 my word. You know, something about the securities  
18 business, you know, the -- we -- everybody did  
19 business on trust.

20 I know it sounds strange coming from me,  
21 all right, but when I went into business the first  
22 thing I learned from both Cy Lewis and Gus Levy is  
23 they said to me, Bernie, whatever you do, you know,  
24 in this business, never break your word because  
25 there was no such thing as written contracts in the



1 securities industry. When everybody called you up  
2 and said I want to sell -- when Merrill Lynch called  
3 you and said I'm selling you a thousand shares of  
4 IBM or a thousand shares of Intel, there was no  
5 contract.

6 You did the trade over the phone. You  
7 waited until you got your confirmation, which may  
8 have been, you know, two days later or it may have  
9 been five days later, and you waited and you assumed  
10 that they were going to deliver on time. And if  
11 they didn't, you were screwed. There was no written  
12 contract.

13 And in 50 years that I was in business, I  
14 never, ever had anyone not honor their contract.  
15 You never thought about it. It was something that,  
16 you know, if you're in this industry, your word was  
17 your bond literally and that was it. You trusted  
18 everybody. And that's the way the industry operated  
19 and for the most part still operates that way today  
20 but not as much.

21 All right. So when I started doing  
22 business with all my clients, I was a little guy  
23 with nothing. No one had any reason -- and Carl  
24 Shapiro always tells this story famously. When he  
25 gave me \$100,000, people thought he was crazy. Why

1 would anybody give me? I was this little kid from  
2 Brooklyn, didn't go to Harvard or so on. Why would  
3 anybody trust me to give me business, you know, turn  
4 their money over to me on a discretionary basis  
5 basically and, you know, and go with it?

6 All right. They did. And because they  
7 showed -- he showed faith in me and guys like Levy  
8 and so on did, all right, I felt obligated to keep  
9 my word. And it was the same thing when I did  
10 business in Europe, you know. People showed a lot  
11 of faith in me. Now, I made them a lot of money.  
12 They weren't doing it, you know, as a philanthropy,  
13 but there was a special relationship I had with  
14 them.

15 And all of these clients, I was like a son  
16 to them and they were like surrogate fathers to me.  
17 All right. So when the crash came in '87 -- and  
18 also I had went from nothing. You know, I started  
19 my business with literally \$500, you know. You  
20 know, all of a sudden, you know, by '87 I was a rich  
21 guy.

22 At least I thought I was very successful  
23 and everybody in the industry thought I was like,  
24 you know, this terrific, terrific success story,  
25 which I was. All right. So when the crash came in

1 '87 and these guys panicked on me, which is not a  
2 surprise in hindsight because the one thing every  
3 one of them was, which is everybody in the industry  
4 is, they're greedy. All right. So they all  
5 panicked. They didn't want to give up their returns  
6 and I made the mistake. What I should have said to  
7 them was look, this is the agreements you have.

8 Now, could I have sued them? There was no  
9 -- there was no written contract, all right, when we  
10 made these agreements to, you know, to not unwind,  
11 you know, prematurely. This was all, you know,  
12 arm's length agreements. These were not -- there  
13 were no contracts in that. So I didn't have the  
14 right to litigate with Carl Shapiro and Jeff Picower  
15 and say listen, you can't sell.

16 You know, if they wanted to sell  
17 regardless of whether they were short, I could have  
18 said no, you've got to sell. I could have said  
19 cover your shorts, too, in other words, but I  
20 didn't. All right.

21 Q. That was my question. Why didn't you tell  
22 them cover your own shorts?

23 A. Because they said to me -- after we argued  
24 and argued for days, everybody says don't panic.

25 Now, you have to understand also that everybody that

1 was trading convertible bonds through me when the  
2 crash came in '87, they had a windfall because every  
3 convertible bond went to premiums. So the guys that  
4 were doing convertible bonds, they thought I was a  
5 goddamned codified genius because the market  
6 crashed, but all convertible bonds, you know, which  
7 you would expect them to do, went to premiums.

8           These guys weren't doing convertible bonds  
9 except for some of their accounts, as I said, so  
10 they didn't -- you know, everybody said -- I said  
11 now, look, don't panic. The market will go up. We  
12 knew Reliant went down because of the United  
13 Airlines bust and the merger and so on. You know,  
14 they didn't want to. They just said look, let's  
15 sell and get out of it.

16           All right. I didn't -- I couldn't force  
17 them to cover the shorts because I had the  
18 Europeans, the French guys on the other side of the  
19 trades. I couldn't close them out prematurely. So  
20 that's why I didn't unwind.

21           So and then they said to me, look, as much  
22 as I -- all I can use is moral-suasion. And they  
23 didn't want to screw me either generally because,  
24 number one, we had a close, family-type  
25 relationship. And also I made them a lot of money.

1 They didn't want to kill the goose that laid the  
2 golden egg. And they were so sure that the market  
3 was -- the shorts were not going to be a problem.  
4 So they said fine. We'll hold you harmless. Close  
5 out, sell the longs out so we get the advantage of  
6 the long-term gains.

7 Let's not worry about the shorts. We'll  
8 take responsibility of the shorts because I said all  
9 right, the market eventually is recovered. You're  
10 going to lose money on the shorts. They said we're  
11 not worried about it. That's why. In hindsight now  
12 it looks like a stupid thing to do and it was.

13 Q. You know, we've looked everywhere. Ellen  
14 has actually asked us for the hold harmless  
15 agreements. We can't find them. Would Price  
16 Waterhouse Cooper as you mentioned have yours? The  
17 likelihood, it's a long time ago so when it  
18 happened.

19 A. No. I mean, you know, Ed Kostin,  
20 unfortunately, has been dead a long time by now. He  
21 did it. I don't know. You know, look, I mean, if  
22 you looked for the trust agreements, you would see  
23 that I was the -- I was the Trustee and the executor  
24 of all of their trust agreements. Now, they've  
25 probably changed it by now.

1 Q. Right.

2 A. But they -- look, there was meetings with,  
3 for example, I don't know whether -- Paul  
4 Konigsberg, did he ever go to jail or did he not go  
5 to jail?

6 MR. GOLDMAN: He's in jail.

7 THE WITNESS: He did not go to jail?

8 MR. GOLDMAN: Konigsberg went to jail.

9 MR. SHEEHAN: No. He walked.

10 MR. GOLDMAN: Not Konigsberg. I'm  
11 thinking of someone else. Okay.

12 THE WITNESS: Okay.

13 MR. SHEEHAN: He should have gone to jail.

14 THE WITNESS: Huh? Look, well, I don't  
15 think anybody should go to jail, but --

16 MR. SHEEHAN: But anyway --

17 THE WITNESS: -- look, these people, there  
18 were meetings held, you know, where the family  
19 because, look, when these guys made these agreements  
20 with me, all right, I said look, these guys were  
21 old. They were -- you know, Carl Shapiro thought he  
22 was going to die. He's still alive as far as I  
23 know.

24 MR. SHEEHAN: He is.

25 THE WITNESS: Carl, he must be 104, for

1 crying out loud, but when he was 60 some odd years  
2 old he called me up hysterical when he had his first  
3 Bell's palsy attack to Boston and said look, I'm  
4 going to die and so on and so forth.

5 And that's when I made Paul Konigsberg his  
6 accountant because, you know, at that time Coopers  
7 and -- PaineWebber, who is Coopers and Lybrand  
8 really, was his accounting firm; but he wanted, you  
9 know, a closer relationship with Paul Konigsberg,  
10 who became his accountant.

11 Q. (By Mr. Sheehan) Who's he? I'm sorry.

12 A. Carl Shapiro.

13 Q. Oh, I'm sorry.

14 A. All right. So all of these guys, most of  
15 them except for Picower, but Picower was unhealthy  
16 to begin with. He'd had three heart attacks and  
17 he'd had, you know -- what does he have? I forgot  
18 what the disease is, you shake all the time.

19 MR. GOLDMAN: Parkinson's.

20 THE WITNESS: Parkinson's, right. I said  
21 look, you know, we have these agreements. I said I  
22 want the family to make -- I want to make sure your  
23 children know this. They weren't really children.  
24 They weren't much younger than -- you know, younger  
25 than me, so I said -- but everybody knew of these

1 agreements, these arrangements that they were  
2 responsible for any losses. And we had meetings and  
3 everyone knew that. So I wasn't even worried about  
4 having, you know, written agreements. We had them,  
5 but when I said to them, look, you know what? When  
6 you die, I said I want -- who's -- you know, you  
7 tell me I'm still handling your investments.

8 So they -- Levy, for example, took JP  
9 Morgan off -- it wasn't JP Morgan. It was Chemical  
10 at the time. Took Chemical and its Trustee and  
11 executor of his estate off and he made me that. I  
12 was going to get to handle all and their kids had to  
13 sign agreements that I was the one that was going to  
14 handle, you know, all of their monies and I had no  
15 responsibility. So this was -- you know, that's  
16 what the agreements were. They all knew what was  
17 going on.

18 Q. We're going to end with this today, all  
19 right, and we'll start tomorrow morning.

20 A. Uh-huh.

21 Q. Early in December you had a meeting in your  
22 office. The big four was there. Fred was there.  
23 Other people were there. What was the purpose of  
24 that meeting?

25 MS. CHAITMAN: Early December of what



1 year?

2 MR. SHEEHAN: '08.

3 THE WITNESS: Oh, that was the foundation  
4 -- that was for the charitable thing that we had. I  
5 was -- we had -- I was raising the money for cancer  
6 then, you know, and Andy had been diagnosed --

7 MR. SHEEHAN: Right.

8 THE WITNESS: -- with cancer. And I  
9 forgot the name of our -- the Madoff foundation we  
10 had. And I -- they were on the board. It was a  
11 board meeting.

12 Q. (By Mr. Sheehan) Did you not discuss the  
13 status of BLMIS that day?

14 A. No, no.

15 Q. You'd just paid out \$11 billion. Two days  
16 later you're going to get turned into the FBI, and  
17 you didn't mention anything?

18 A. Paying out \$11 billion?

19 Q. Pardon?

20 A. What do you mean paying out 11 billion?

21 Q. You had just paid out over the past year  
22 \$11 billion in redemptions?

23 A. Oh, yeah.

24 Q. Here's the big four, Fred and other people  
25 as you're sitting here?

1           A. No. The only one that was there was Fred.  
2 Shapiro wasn't there. One of his -- Bob Jaffey was  
3 there. I don't think Jeff Picower was there. I  
4 don't know if his wife was there. I don't think  
5 Picower was there. Either he may have been in  
6 Florida. No. We didn't -- I mean, I knew that I  
7 was in trouble, but no one else did, including my  
8 wife.

9           MR. SHEEHAN: Okay.

10           MS. CHAITMAN: When you say Fred, are you  
11 referring to Fred Wilpon?

12           THE WITNESS: Yeah. He was on the board.  
13 He was on the board, my board.

14           MR. SHEEHAN: Okay. Let's end it there.

15           THE VIDEOGRAPHER: Okay. This concludes  
16 the deposition. Going off the record at 2:42 p.m.

17           (The deposition was adjourned at 2:42  
18 p.m.)

19                   \* \* \* \* \*

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C E R T I F I C A T E

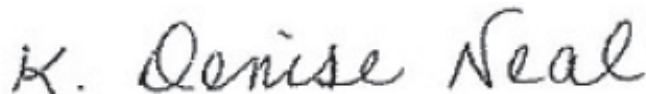
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I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 209 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 10th day of May, 2017.



K. Denise Neal, RPR

Registered Professional Reporter

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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